

No. [REDACTED]

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

B. ELTON COX,

Appellant,

against

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

JURISDICTIONAL STATEMENT

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IN THE
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ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of Louisiana entered in the above-entitled case on June 28, 1963, which affirmed the verdict of conviction rendered by the District Court for the Nineteenth Judicial District, Parish of East Baton Rouge, Louisiana (hereinafter referred to as the "District Court").

CITATIONS TO OPINIONS BELOW

The oral opinion of the judge of the District Court, given at the end of the trial of this case is unreported and is printed in the Appendix at p. 4a. The opinion of the Supreme Court of Louisiana denying the application for writs of mandamus, certiorari and prohibition, and affirming the judgment of the District Court, reported in — La. —, 156 So. 2d 448 (1963), is printed in the Appendix at p. 10a.

JURISDICTION

Appellant was convicted under the Louisiana breach of the peace statute, L. S. A.-R. S. 14:103.1, and the Louisiana 14:100.1, set out in the Appendix at pp. 1a and 2a. The judgment of the Supreme Court of Louisiana affirming the conviction was entered on June 28, 1963, and rehearing was denied by that Court on October 9, 1963. The jurisdiction of the Supreme Court to review the judgment by appeal in this case is conferred by Title 28 of the United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the decision on appeal in this case: *Cantwell v. Connecticut*, 310 U. S. 296 (1940); *Winters v. New York*, 333 U. S. 507 (1948); *Saia v. New York*, 334 U. S. 558 (1948).

QUESTIONS PRESENTED

Whether the Louisiana breach of the peace statute, Louisiana Statutes Annotated, R. S. 14:103.1, by reason of its vagueness and uncertainty, is repugnant to the due process clause of the Fourteenth Amendment to the Constitution.

Whether the Louisiana breach of the peace statute, Louisiana Statutes Annotated, R. S. 14:103.1, as applied to appellant, by infringing his right of free speech and free assembly, and to petition for redress of grievances, denied him due process of law and equal protection of the laws under the Fourteenth Amendment to the Constitution.

Whether the Louisiana statute against obstructing the sidewalk, Louisiana Statutes Annotated, R. S. 14:100.1, as applied to appellant, by infringing his right of free speech

and free assembly, and to petition for redress of grievances, denied him due process of law and equal protection of the laws under the Fourteenth Amendment to the Constitution.

Whether appellant was denied equal protection of the laws and due process of law under the Fourteenth Amendment to the Constitution by being tried in a courtroom that was segregated due to state action.

STATUTES INVOLVED

The statutory provisions involved are Louisiana Statutes Annotated, R. S. 14:103.1 and R. S. 14:100.1. They are printed in the Appendix at pp. 1a, 2a.

STATEMENT

On December 14, 1961, twenty-three youngsters who were picketing stores in the downtown area of Baton Rouge, Louisiana, in protest against segregation and discrimination against Negroes, were arrested (T. 348, 400, 458)* and were incarcerated in the jail adjacent to the District Courthouse in Baton Rouge (T. 348, 466). Shortly before noon, the following day, students from a nearby Negro college, Southern University,** began to gather about the

* The transcript of the trial in the District Court, though made by a court stenographer, is not physically part of the record before the Louisiana Supreme Court. To supplement the record, referred to herein by the symbol "R-", the transcript of trial is submitted with this petition and referred to by the symbol "T-".

** While the immediate facts of this case are as stated here, the events were part of a continuous course of conduct in Baton Rouge on December 15, 1961. Petitions for certiorari have been filed with this Court in two other cases arising out of these events. *Moore v. Louisiana* (conviction for use of a sound truck) and *Clemmons v. CORE*, where the Court of Appeals for the Fifth Circuit vacated an injunction against CORE granted by the U. S. District Court in Baton Rouge, La., 323 F. 2d 54 (5 Cir. 1963).

old Capitol Building in Baton Rouge (T. 251, 437, 510-512). About noon the students marched down to the Courthouse under the leadership of the appellant, the Rev. B. Elton Cox, a field secretary for the Congress of Racial Equality (T. 468, 513). Mr. Cox conferred with the Sheriff, the Chief of Police and other law-enforcement officers, and explained to them that the students intended to demonstrate in protest against segregation and discrimination in the stores and against the arrest of the pickets. He further presented a program for the demonstration (T. 351, 371, 470; 515). The Sheriff stated on cross-examination that he had "no objection" to the demonstration under that program (T. 363-364). The Chief of Police allowed seven minutes for the demonstration (T. 101, 516-517), and limited it to the West side of the street, opposite the Courthouse (T. 371, 516).

The students, more than fifteen hundred of them (T. 51, 71, 269, 313), assembled on the sidewalk on the West side of the street. A curious group of white people gathered on the opposite side of the street (T. 20, 28, 167). More than seventy-five policemen and sheriff's deputies were present, who, according to the inspector who was in charge of the policemen, "could handle any situation that should arise" (T. 329). No violence of any kind occurred during the demonstration; on the contrary, all testimony proved that the Rev. Mr. Cox maintained control of the students at all times (T. 98, 107, 257, 318, 355). In accordance with the program described to the Sheriff the students pledged allegiance to the flag of the United States, recited the Lord's Prayer, exhibited signs protesting segregation and sang freedom songs. In response the students in the

jail (arrested the previous day) began to sing (T. 467). Hearing the prisoners sing, the demonstrators uttered a cheer (T. 54, 60, 353). Mr. Cox made a speech (T. 42, 235, 255, 325, 516-518) which not only contained nothing of violence in it (T. 29, 44, 158, 268, 302), but in fact directly forbade violence (T. 37, 299, 363). Mr. Cox advised that if any of the demonstrators should be attacked, he was not to retaliate. According to Cox's own testimony, with which other witnesses were in agreement (T. 29, 37, 53, 105, 153, 196, 272-3), he said at the close of his speech:

" . . . all right. It's lunch time. Let's go eat. There are twelve stores we are protesting. A number of these stores have twenty counters, they accept your money from nineteen. They won't accept it from the twentieth counter. This is an act of racial discrimination. These stores are open to the public. You are members of the public. We pay taxes to the Federal Government and you who live here pay taxes to the state." (T. 518)

That was the sticking-point for the Chief of Police and the Sheriff (T. 364, 376), who then commanded the demonstrators to break up the demonstration. Tear gas was released into the crowd, which then broke up immediately (T. 377).

Mr. Cox was arrested and charged with criminal conspiracy, breach of the peace, obstructing the sidewalk, and demonstrating in front of a courthouse with the intent of obstructing justice. The trial took place in the District Court at Baton Rouge, the very building before which the demonstrators had gathered, on January 29 through 31, 1962, without a jury. The criminal conspiracy charge was dismissed, but Cox was convicted on the other three counts.

In the course of his opinion in regard to breach of the peace, the trial judge stated:

"It must be recognized to be inherently dangerous and a breach of the peace to bring 1,500 people, colored people, down in the predominantly white business district in the City of Baton Rouge and congregate across the street from the courthouse and sing songs as described to me by the defendant as the CORE National Anthem carrying lines such as 'black and white together' and to urge those 1,500 people to descend upon our lunch counters and sit there until they are served. That has to be an inherent breach of the peace * * *". (T. 545; Appendix at pp. 8a-9a)

Cox was sentenced* to serve four months in jail and pay a fine of \$200.00, or in default thereof to serve four months additional for breach of the peace, and for obstructing the sidewalk he was sentenced to serve five months in jail and pay a fine of \$500.00, or in default thereto to serve five months additional. For obstructing justice he was sentenced to serve one year in jail and to pay a fine of \$5000.00, or in default thereof to serve one year additional. The obstructing justice charge has been reviewed in the Louisiana Supreme Court by way of appeal.** The Supreme Court of Louisiana reviewed the convictions for obstructing the sidewalk and breach of the peace by way of applications

* The Supreme Court of Louisiana reviewed the sentencing procedures in the convictions in these cases for breach of the peace and obstructing the sidewalk, and found them to be invalid, *Cox v. Clemmons*, 243 La. 264, 142 So. 2d 794 (1962). The appellant was subsequently resentenced.

** The decision in that case was affirmed by the Supreme Court of Louisiana on November 12, 1963, and petitioner has sought a rehearing in that court.

for supervisory writs of mandamus, certiorari and prohibition,* and it is the denial of these applications for which review is sought in this Court.

The validity of the statutes here involved was called into question because of their repugnance to the Constitution of the United States, and other federal questions were raised in the District Court by a motion to quash prior to trial (R. 16), and by motions in arrest of judgment and for a new trial (R. 30, 35). Each of these motions was denied (R. 42, 48, 56) and together with the opinions of the District Court they appear in the Appendix at pp. 27a, 31a, 36a. In appellant's application to the Louisiana Supreme Court for writs of certiorari, mandamus and prohibition in these cases, the validity of the statutes was again questioned on the ground of repugnancy to the Constitution of the United States. The decision of the Louisiana Supreme Court upheld their validity.

The record is clear that the courtroom was segregated by order of the District Court judge. The judge took judicial notice of this fact, stating:

"The Court: Also, let the record show that it has been the practice and custom in the East Baton Rouge Parish Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white, and let the record espe-

* Under Article VII, Sec. 10, Louisiana Constitution, the Supreme Court of Louisiana has general supervisory powers over inferior courts, but no appeal is available in criminal cases unless a sentence of more than six months or a fine of more than \$300.00 has been imposed. Despite the fact that the fine imposed under the obstructing the sidewalk charge was \$500.00 the Supreme Court of Louisiana reviewed the case by application for supervisory writs.

cially show that the judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people." (T. 5-6, Appendix at pp. 40a-41a).

The Deputy Sheriff in charge of the jail and a second deputy testified as to the composition of the courtroom, the numbers of empty seats reserved for whites, and the number of colored people waiting in the corridors of the courtroom (T. 340-345). These passages in the record appear in the Appendix at pp. 42a-45a. The question of the fairness of the trial was also raised in the motions in the District Court and in the application to the Louisiana Supreme Court.

THE QUESTIONS ARE SUBSTANTIAL

1. Unconstitutionality of Statutes.

The demonstration which occurred in this case is a classic example of a peaceful assembly for the redress of grievances, see *Edwards v. South Carolina*, 372 U. S. 229 (1963), and as such it is within the protected area of "free trade in ideas" under the First Amendment. When the legislature or the courts establish a rule of law which may infringe upon the expression of ideas, the law must be "narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state." *Cantwell v. Connecticut*, 310 U. S. 296, 311 (1940), quoted by Harlan, J., concurring in *Garner v. Louisiana*, 368 U. S. 157, 202 (1961). Under this standard, as applied in decisions of this court, the breach of the peace statute under which Mr. Cox was convicted, Louisiana Statutes Annotated, R. S. 14:103.1, Appendix at p. 2a, is

invalid by reason of its repugnancy to the right of freedom of speech as embodied in the Due Process Clause of the Fourteenth Amendment to the Constitution. The statute is drawn so as to punish the acts of congregating on a sidewalk and failing to "move on, when ordered so to do by any law enforcement officer * * *", when these acts are done " * * * under circumstances such that a breach of the peace may be occasioned thereby * * *" (Emphasis added): The emphasized phrase plainly may be used to punish more than conduct which presents a clear and present danger to the interest of the state, and logically draws within its ambit that free expression of ideas which is protected by the First Amendment. (The dangers of such a phrase are clearly evident in this case, where the statute has been used to punish protected speech. A similar phrase was used by the Supreme Court of South Carolina in defining the common-law offense of breach of the peace,* and in *Edwards v. South Carolina*, 372 U. S. 229 (1963), this interpretation of the meaning of breach of the peace was held to infringe the rights of demonstrators to freedom of speech and freedom to petition for redress of grievances. See also *Winters v. New York*, 333 U. S. 507 (1948).

The clause in the breach of the peace statute which punishes a failure to " * * * move on, when ordered to do by any law enforcement officers * * *" is also repugnant to freedom of speech, since it puts in the hands of law enforcement officers the power to control street demonstrations, while

* * * * It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful; tending with sufficient directness to break the peace, no more is required. * * *. 239 S. C. at 343-344, 123 S. E. 2d at 49, quoted in 372 U. S. at 234.

providing no standards for the protection of the peaceful expression of ideas. *Winters v. New York*, 333 U. S. 507 (1948).

The vague phraseology of the Louisiana breach of the peace statute thus permits the officers of the state to punish speech even when it is peaceful, on the ground that it may produce disturbance and unrest, exactly as they have done in this case, and it is just this official interference with speech that the First Amendment is intended to prevent. This phraseology further permits spectators who disagree with opinions in a speech to bring it to an end by creating, or even threatening a disturbance. It is clear that the right of freedom of speech may not be limited because of the opposition of spectators. *Terminiello v. Chicago*, 337 U. S. 1 (1948).

The interpretation of the breach of the peace statute by the Supreme Court of Louisiana and the Baton Rouge District Court in this case have only served to increase the repugnancy of the statute to the right of freedom of speech. The Supreme Court of Louisiana in 156 So. 2d at 454, in the Appendix at pp. 19a-20a, attempted to distinguish the *Edwards* case, *supra*, on the ground that the conviction in the present case was obtained under a precisely drawn regulatory statute, similar to a traffic law, a situation specifically left open in the *Edwards* case, 372 U. S. 229, 236. In fact, however, the Louisiana Supreme Court failed to define the breach of the peace statute as a narrowly drawn regulatory statute, for that court commented upon the statute as follows:

"LSA—R. S. 14:103.1 is said to be ambiguous for it is not clear whether the prosecution must show an actual disturbance or only circumstances such

that a disturbance may be occasioned. In either event, however, we think there is no ambiguity in that language of the statute for to disturb the peace in Louisiana means " . . . to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." *Town of Ponchatoula v. Bates*, 173 La. 824, 138 So. 851 (1932)" — La. at —, 156 So. 2d at 448, Appendix at p. 22a.

This statute, as interpreted by the highest court of the state, thus punishes speech protected by the First Amendment, under the decision in *Terminiello v. Chicago*, 337 U. S. 1 (1948). The terms used by the state court in defining the statute held invalid in that case were similar to the terms used by the Louisiana Supreme Court here, and the rationale used by this Court in deciding that case is equally applicable to the present case:

"Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, *Chaplinsky v. New Hampshire*, supra (315 US pp. 571, 572, 86 L. ed. 1034, 1035, 62 S. Ct. 766), is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." 337 U. S. at 4.

The definition of disturbing the peace used in this case by the judge of the District Court (T. 545, quoted *supra*, p. 6), is even more objectionable under the standard of the *Terminiello* case. The judge there took the position that a mass demonstration against segregation was an "inherent breach of the peace." This rule deliberately restricts and discriminates against speech, however peaceful, which tends to arouse a complacent public from its acceptance of segregation, and such a standard is condemned by *Terminiello*.

The statute against obstructing the sidewalk, Louisiana Statutes Annotated, R. S. 14:100.1, in the Appendix at p. 1a, and the breach of the peace statute as well, were administered by the state and city authorities so as to discriminate against active campaigning for integration of the races. The demonstration in this case was not violent and did not advocate violence, as the officers knew (T. 299, 363, discussed *supra*, p. 5), and it was not on account of violence that the demonstration was broken up. The city and state authorities were willing to permit and did permit the demonstration in this case until the Mr. Cox advocated a sit-in; only then did the demonstration seem to them a disturbance of the peace (T. 364, 376, discussed *supra*, p. 5).^{*} Under the decisions of this Court, to permit a demonstration until it advocates something with which the authorities or the general public disagrees, however emphatically, is a discriminatory application of the law which constitutes both an unwarranted interference with freedom of speech and a denial of equal protection of the laws under

^{*} The judge of the District Court agreed with them in ruling that demonstrating against segregation by singing a song with the lines, "black and white together", and urging a sit-in is an "inherent breach of the peace" (T. 545, quoted *supra*, p. 6).

the Fourteenth Amendment. See *Niemotko v. Maryland*, 340 U. S. 276, 273 (1951), *Terminiello v. Chicago*, 337 U. S. 1 (1948).

The question of the repugnancy to the Constitution of the Louisiana statutes involved in this case is a most important and pressing problem. As this Court noted in *Garner v. Louisiana*, 368 U. S. 157, 168 (1961), which involved an earlier Louisiana breach of the peace statute, the statutes involved here were passed in the attempt to punish sit-ins and other forms of protest against segregation. The peaceful protest against segregation is surely one of the most important forms of political expression of our time, and the question whether a statute may validly be drawn or administered in such a way as to kill that form of expression is one of the most important problems presented to this Court in this or any other time. Until this question is decided, the Louisiana statutes cast a pall over peaceful protest in the state.*

2. Segregated courtroom.

The segregation in the courtroom at the trial of this case does not present an appealable issue under the rules of this Court, but it does present a most urgent federal question affecting the administration of justice. The case of *Johnson v. Virginia*, 373 U. S. 61 (1963), in which this Court reversed the conviction of the defendant, a Negro, for contempt for sitting in the section reserved for whites in a state courtroom, has established the proposition that segre-

* Two other prosecutions arose out of the events in Baton Rouge on December 15, 1961, in the effort to stifle protest against segregation. *Clemmons v. CORE*, 323 F. 2d 54 (5 Cir. 1963); *Moore v. Louisiana*. They are discussed above, footnote to p. 3.

gation of a courtroom by state action is a denial of equal protection of the laws.

It is perfectly clear on the record in this case that the courtroom was segregated by action of the judge (T. 5; *supra*, p. 7): The Louisiana Supreme Court distinguished the *Johnson* case on the ground that the defendant here was not the person discriminated against in the courtroom. — La. at —, 156 So. 2d at 456, Appendix at p. 25a.

Left open is the question as to whether the defendant ~~had a fair trial, or could have had one, in a courtroom blatantly administered in an unconstitutional way.~~ In a case such as this, where the trial judge is required to decide whether or not a demonstration against segregation constitutes a clear and present danger to a substantial interest of the state, *Cantwell v. Connecticut*, 310 U. S. 296, 307 (1940), a question entailing a large area of discretion about the effects of segregation and integration upon the public mind, the presence of segregation in the courtroom must necessarily affect his decision. If he not only has the segregated courtroom before his eyes, but administers it as well, the effect must be still stronger. If the unconstitutional administration of the court affects its decisions upon the law and the facts, it must be a denial of a fair trial under the Due Process Clause of the Fourteenth Amendment to the Constitution. Cf. *Irvin v. Dowd*, 366 U. S. 717 (1961).

The segregation of the courtroom, furthermore, has ~~denied the Rev. Mr. Cox a public trial, within the meaning of the Sixth Amendment.~~ The requirement of a public trial is applicable to trials in state courts under the Due Process Clause of the Fourteenth Amendment, *Re Oliver*, 333 U. S. 257 (1948). Two of the bases for the requirement of a

public trial, as outlined by Dean Wigmore, are to discover new witnesses and make existing witnesses disinclined to falsify. Wigmore on Evidence, Section 1834 (1940 Ed.). These two elements of the requirement have been infringed in this case, where the officers who made a count of the persons present, inside and outside the courtroom, found that colored people were waiting to get in, while seats were empty in the courtroom (T. 340-341, in the Appendix at pp. 42a-45a). These people, had they been in the courtroom might have influenced the witnesses who appeared toward greater veracity, and more important, they might have included among themselves some further witnesses. To exclude them in a discriminatory way was to deny the petitioner the essential elements of a public trial. Cf. *United States v. Kobi*, 172 F. 2d 919 (3 Cir. 1949).

The question whether it is a denial of a fair and public trial to try a case, involving freedom of speech about segregation, in a courtroom segregated by state action has not been squarely presented to this court before. It raises very basic questions as to what sanctions ought to be used by the federal government to prevent unconstitutional acts of segregation by the states and what effect such unconstitutional segregation has upon the state administration of criminal justice. It is perfectly clear that this Court has the power to reverse a state conviction, because of the unconstitutional administration of justice, in the effort to impose effective sanctions for the violation of constitutional rights, *Mapp v. Ohio*, 367 U. S. 643 (1961), and in a case such as this, where the unconstitutional administration must influence both the decision of the judge and the publicity of the trial, it is essential that the power be used.

It is submitted that the statutes here involved are repugnant to the right of freedom of speech under the Constitution of the United States and that the decision of the Louisiana Supreme Court in favor of the validity of these statutes is in error. It is further submitted that these statutes have been applied and administered in a manner which denied to appellant due process of law and equal protection of the laws. We believe that the questions presented by this appeal are substantial and of the utmost public importance.

Respectfully submitted,

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APPENDIX TO JURISDICTIONAL STATEMENT

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Statutes Involved

LOUISIANA STATUTES ANNOTATED—R. S. 14:100.1

§100.1 OBSTRUCTING PUBLIC PASSAGES

No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.

Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions.

Whoever violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both fined and imprisoned.

This section shall not be applicable to the erection or construction of any barricades or other forms of obstructions as a safety measure in connection with construction, excavation, maintenance, repair, replacement or other work, in or adjacent to any public sidewalk, street, highway, bridge, alley, road, or other passageway, nor to the placing of barricades or other forms of obstruction by governmental authorities, or any officer or agent thereof, in the proper performance of duties. Added Acts 1960, No. 80, §1:

Emergency. Effective June 22, 1960.

Statutes Involved

LOUISIANA STATUTES ANNOTATED—R. S. 14:103.1

§103.1 DISTURBING THE PEACE

A. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place or building or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person, or

Statutes Involved

(2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(3) while in or on any public bus, taxicab, boat, ferry or other water craft or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in sub-section (2) *supra*, to, toward, or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refuses to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof, shall be guilty of disturbing the peace.

B. Whoever commits the crime of disturbing the peace as defined herein shall be punished by a fine of not more than two hundred dollars, or imprisonment in the parish jail for not more than four months, or by both such fine and imprisonment. Added Acts 1960, No. 69, §1.

Opinion of Hon. Fred A. Blanche, Judge of the Nineteenth Judicial District of East Baton Rouge, Louisiana

(540)

REASONS FOR JUDGMENT

By the Court:

Before rendering a verdict, I want to caution the members present in court that I expect complete orderliness to be carried out just as it has been while arguments of counsel were going on and just like it has been throughout this entire trial.

First of all, the Court would like to thank both counsel for their respect to the Court and toward each other. The Court takes cognizance of the fact that during a heated trial sometimes both witnesses and counsel and the Court have heated exchanges, and I think that in a case of the character of this case involving demonstrators or rather the leader of a demonstration protesting segregation in this community, it is particularly admirable. It is admirable because, as counsel pointed out in argument, we have lived here peacefully in this community under a system of segregation from time immemorial and then all of a sudden in one day we have a protest of 1,500 people strong in the City of Baton Rouge and against what has been a custom for so long.

I want to dictate into the record exactly all of my reasons for judgment because much of the evidence adduced by both the prosecution and by the defense was based on hearsay, but I, as the judge of this court, am able to
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discriminate as to what is hearsay and what is not hearsay and what, in my opinion, is valid evidence.

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With regard to the charge in 42,199, the Court finds B. Elton Cox not guilty. (I promise you, if I hear any further demonstration, I will empty the courtroom.) I find B. Elton Cox not guilty because he is charged under our attempt statute which is 14:26, and I cannot find him guilty of this charge because it is my opinion that the law of this state is that there must be some overt act perpetrated in violation of the statute which he is charged with, namely, 14:100.1 and 14:100.3, and the only evidence to prove this was that the defendant told the demonstrators to go down to the lunch counter and stay there. Our law, however, I think is that there must have been some overt act on the part of those with whom he was in conspiracy to violate that law, and I think probably had it not been for the police breaking up the demonstration that he would have been found guilty of this charge. I do think that the police broke it up before any one of them could make one move in that direction.

Now, with regard to the charge that is contained in bill No. 42,200. In bill No. 42,200 he is charged:

"... in that he did wilfully obstruct the free, convenient and normal use of a public sidewalk within the City of Baton Rouge thereby impeding, hindering and restraining passage thereon."

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This Court takes cognizance of the fact that there has been testimony of competent witnesses from our police force who have had experience in estimating crowds; I have seen the pictures taken by Mr. Bob Durham which reflect to me that the sidewalk was effectively blocked. To place

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some 1,500 people—The evidence was that the people did not block the service station area which is shown on a map of E. R. Nilson Map Service, but the testimony of both the police and disinterested witnesses not in anywise connected with law enforcement as well as the photographs taken by the photographer in the news film show that in the area ten feet wide according to this map and some 256 feet long that there were contained by the minimum estimate some 1,500 people; and if 1,500 people can congregate in 256 feet without blocking it, then the Court would have to be blind to physical facts. So, for that reason, as a consequence of what I saw on the film and from what I heard, I say and hold that this sidewalk on the west side of the Courthouse was obstructed for the convenient and normal use as a public sidewalk in the City of Baton Rouge and that it did impede and hinder and restrain passage thereon in the direct words of the statute that this bill of information which I read from tracks the statute. I find the defendant guilty of that charge.

With regard to No. 42,202 wherein he is charged with violating R. S. 14:103.1, R. S. 14:103.1 says that:

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“Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of peace may be occasioned thereby: (1) crowds or congregates with others . . . upon a public sidewalk, (and, of course, I have omitted the parts of the statute which are not pertinent) or any other public place or building (which is what he is charged with in the bill of information) . . . and who fails or

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refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the State of Louisiana . . .”

commits the crime of disturbing the peace. With regard to this statute, an attack has been made on this statute on the grounds that it is unconstitutional because it seeks to prohibit or punish the defendant by virtue of a criminal statute when he has a right as a citizen to peacefully protest against the segregation laws of the State of Louisiana or to protest against racial segregation and discrimination.

First of all, let me say that this Court respects the right of freedom of speech. It respects the right to picket, but even the right to picket and the right of freedom of speech is subject to limitation. Restrictions have been placed on (544)

the right to picket by the Federal Government and elsewhere under our state law involving labor activities with regard to their right to picket. In any event, picketing is said to be lawful when it is peaceful because it represents freedom of speech. Now, the right to protest is lawful, and the right to protest is lawful if it is conducted in a lawful manner. Our courts have held that picketing is unlawful when it is mass picketing, and if this protesting is a form of freedom of speech, I say it is unlawful when it is done en masse by some 1,500 people of the colored race parading on the streets of Baton Rouge and congregating on the sidewalk in violation of this statute.

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If this statute is a "segregation statute," it should be one of the segregation statutes that should be upheld by every court in this land. It should be upheld because it undertakes to understand the mood and the nature of our people, both colored and white. It recognizes, as this Court recognizes, that in the City of Baton Rouge there is racial tension. It recognizes, as our legislators must have recognized, that there is racial tension within the State of Louisiana; and the intent of the statute is to give the police the power to punish or disband or break up mass demonstrations, especially where they might involve racial overtones. It doesn't take a smart judge or it doesn't take any evidence to be presented to this Court to know that since (545)

the advent or since the decision of the United States Supreme Court (I think the case was *Brown v. Topeka*), that racial tension has mounted in the south, and understandably so, because after living under that system for hundreds and hundreds of years the change didn't just occur overnight. They recognize the basic human instinct that there would be resentment toward integration in the South, and I think our Legislature wisely took steps to have a statute on the books that would give law enforcement authorities the power to make it unlawful for anyone to demonstrate in such a manner so as to effectively block the sidewalk, which was done in this case. It should be inherently dangerous and a breach of the peace, recognizing racial tension as we have it in the south. It must be recognized to be inherently dangerous and a breach of the peace to bring 1,500 people, colored people, down in the

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predominantly white business district in the City of Baton Rouge and congregate across the street from the courthouse and sing songs as described to me by the defendant as the CORE national anthem carrying lines such as "black and white together" and to urge those 1,500 people to descend upon our lunch counters and sit there until they are served. That has to be an inherent breach of the peace, and our statute 14:103.1 has made it so.

Opinion of the Supreme Court of Louisiana

(1)

SUPREME COURT OF LOUISIANA

No. 46,395

STATE OF LOUISIANA

versus

B. ELTON COX

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE
HONORABLE FRED A. BLANCHE, JR., JUDGE

No. 46,396

STATE OF LOUISIANA

versus

B. ELTON COX

IN RE: B. ELTON COX APPLYING FOR WRITS OF CERTIORARI,
MANDAMUS AND PROHIBITION TO THE NINETEENTH
JUDICIAL DISTRICT COURT, PARISH OF EAST BATON
ROUGE, STATE OF LOUISIANA

SUMMERS, Justice.

In these consolidated cases¹ defendant, B. Elton Cox, was charged by the district attorney of East Baton Rouge

¹ There were four bills of information filed against the accused that were consolidated for trial below. On one charge involving criminal conspiracy the accused was acquitted; another charge of obstructing justice is on appeal in this court and is separately docketed; the remaining two of the four charges are the subject of this opinion.

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Parish with obstructing public passages as defined and prohibited by R. S. 14:100.1. He was convicted, sentenced (2)

to pay a fine of \$500 and to be imprisoned in the parish jail for a period of five months, and, in default of the payment of the fine, to be imprisoned an additional five months. An appeal was taken in this case and is docketed in this court under Number 46,395.

By separate bill of information Cox was charged with disturbing the peace as defined and prohibited by R. S. 14:103.1. He was convicted, sentenced to pay a fine of \$200 and to imprisonment in the parish jail for a period of four months, and, in default of the payment of the fine, to be confined in the parish jail for four months. The accused having no right of appeal in this latter case, made application to this court for writ of certiorari, mandamus and prohibition which we granted under our supervisory powers to review the correctness of certain actions below.²

² In both of these cases the accused was incarcerated in the parish prison pursuant to the sentences which were decreed to run consecutively. But, originally, because of the trial court's failure to allow proper delay after verdict and before sentence as required by R. S. 15:521 we granted writs of habeas corpus in both of these cases. In our review of the trial court's action (See *State v. Clemmons*, 243 La. 264, 142 So. 2d 794 (1962)) the writs were made peremptory, the sentences were annulled and set aside and the accused was ordered released on bail until such time as legal sentences were imposed and the accused was afforded an opportunity to take the procedural steps necessary to bring the matter before this court either on appeal or by writ application.

When the cases were again resumed below, the accused filed certain motions, perfected bills of exceptions and, in due time, was again sentenced as outlined in the body of this opinion.

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The bill of information in No. 46,395 charges that defendant "did violate the provisions of R. S. 14:100.1 in that he did wilfully obstruct the free, convenient and normal use of a public sidewalk within the City of Baton Rouge, (3)

thereby impeding, hindering and restraining passage thereon."

The pertinent parts of the statute relied upon by the State provide:

"No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passage-way, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.

Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions. * * *

R. S. 14:100.1

The bill of information in No. 46,396 charges that defendant "violated R. S. 14:103.1, * * * in that he did under circumstances such that a breach of the peace could be occasioned congregated with others in and upon a public street and upon public sidewalks in front of the Courthouse

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in the Parish of East Baton Rouge, a public building, and in and around certain entrances of places of business and failed and refused to disperse and move on when ordered (4)

to do so by the Sheriff of East Baton Rouge, a person duly authorized to enforce the laws of this State."

The pertinent portion of the statute upon which this charge is based provides:

"A. Whoever with intent to provoke a breach of the peace or under circumstances such that a breach of the peace may be occasioned thereby: (1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place or building, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an

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association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so

(5)

to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person
 " * * shall be guilty of disturbing the peace. * * ."

The defendant filed motions to quash and motions for bills of particulars to each of these bills of information prior to trial. These motions were overruled and the cases proceeded to trial, where these facts were established.

On the morning of December 15, 1961, the defendant, Cox, as the unquestioned leader, with a crowd of Negroes variously estimated at 1,500 to 3,800 (we think 2,000 persons is a fair conclusion to be derived from the evidence) assembled in the heart of Baton Rouge in the vicinity of the Old State Capitol Building, a short distance from the parish courthouse. Shortly before noon, Cox led these demonstrators in an orderly fashion to the vicinity of the parish courthouse, where the sheriff, chief of police and a substantial contingent of approximately eighty law enforcement officials had gathered in preparation for the march upon the courthouse. Twenty-three Negroes had been arrested the day before for demonstrations in Baton Rouge and they were at that time imprisoned in the parish jail located in the upper floor of the courthouse building.

Arriving near the courthouse in the vanguard of the marchers, Cox was confronted by the sheriff and chief of

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police and was asked what his intentions were. He announced to them that the marchers were demonstrating (6)

against segregation and their activities would be confined to a few songs, a speech, and peaceful demonstrations, the whole of which would consume only a few minutes. The sheriff then advised Cox to confine his demonstration to the time mentioned and no more.

The marchers then occupied the sidewalk across the street from the western entrance of the courthouse. The testimony and motion pictures in evidence unmistakably establish the fact that the marchers completely occupied the entire sidewalk for the greatest portion of a block across from the courthouse in such a manner that no passage was possible thereon. All of the entrances to many offices facing that sidewalk were blocked, their occupants being unable to enter or leave. In the words of one witness the demonstrators were "tightly packed" along most of the sidewalk. Unmistakably, too, these activities resulted in an obstruction of the street separating the sidewalk occupied by the marchers and the courthouse. Because of this, it was necessary to reroute traffic away from that street. Meanwhile, several hundred white persons had gathered in front of the courthouse across the street from the demonstrators.

There were silent prayers and a display of signs, which the demonstrators had kept hidden in their clothing. These signs being the identical ones used by the demonstrators who had been arrested the day before. All of these activities took place under Cox's command and according to

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instructions he issued during each phrase of the demonstration.

Cox then made a speech which was in effect "a protest against the illegal arrest of some of their members." He admonished the multitude of demonstrators to remain
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peaceful and generally built them up emotionally for further sit-in demonstrations which he instructed them to conduct at lunch counters in the business district of the city upon leaving the scene.

The crowd then sang songs, answered by the prisoners in the jailhouse, and this in turn evoked loud and frenzied outbursts and "wild yells" from the demonstrators assembled on the sidewalks.

Whereupon "grumbling" was heard among the white people, a feeling of "impending excitement" was apparent to all and a fear arose among those present that they were "about to have a riot." Several witnesses testified that in their lifetime no demonstration of this nature or scope had ever taken place in Baton Rouge. As one witness expressed it the crowd was "rumbling." In the large crowd the "tension was running high." Some of the witnesses felt the demonstrators were about to storm the courthouse to get the prisoners who had been arrested the day before.

At this time the prisoners in jail were "hollering", "screaming", "beating on bars", "beating on walls and so on" trying to attract the attention of the demonstrators across the street.

The sheriff, feeling that a riot was imminent, and fearing the crowd would get out of hand instructed Cox by means of a loudspeaker so that all present could hear to

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"move on" and "break it up", that he had had his time. Cox then instructed the demonstrators by saying "Don't move" and by his actions and demeanor defied the sheriff's orders. The demonstrators and Cox stood immobile. They refused to move on.

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The police then dispersed the crowd with tear gas and Cox was arrested the next day.

Four causes are assigned by the accused for setting aside the conviction below.

First, it is asserted that the specific laws under which he was charged, tried and convicted (R. S. 14:100.1 and R. S. 14:103.1) are unconstitutional in their application, for the conviction thereunder infringes upon the defendant's right of free speech protected by the First Amendment of the United States Constitution which the States cannot deny its citizens because of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

Second, the claim is made that these laws and the bills of information are too vague and general and hence violate the due process and equal protection clauses of the Fourteenth Amendment.

Third, it is contended that Cox's trial and conviction were violative of the Fourteenth Amendment for there was no evidence tending to prove the crime charged.

Fourth, it is contended that the segregated conditions in the courtroom during the trial denied Cox a fair trial in violation of the Sixth and Fourteenth Amendments.

Defendant's first contention is based upon the proposition that the statutes (R. S. 14:100.1 and R. S. 14:103.1)

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prohibiting the obstructing of public passage and disturbing the peace, under which defendant was convicted, are unconstitutional in their application in this case. The defendant asserts that if those statutes are construed to (9)

convict defendant for his action in obstructing the sidewalks while demonstrating against segregation it deprives him of the freedom of assembly and freedom of speech and the right to peacefully picket guaranteed by the First Amendment to the Constitution of the United States. Under the due process and equal protection of the laws clause of the Fourteenth Amendment, it is contended, the State of Louisiana must afford the right of freedom of speech to this defendant. Defendant relies upon the case of *Thornhill v. Alabama*, 310 U. S. 88, 60 Sup. Ct. 736, 84 L. Ed. 1093 (1940), holding that peaceful picketing was within the liberties protected by the First and Fourteenth Amendments. The argument is advanced that such interest as the State of Louisiana has in protecting the public peace is not substantial enough to justify this prosecution which has the effect of denying to the accused the guarantees of freedom of speech and expression.

Thus we understand the contention to be that even though the statute might be constitutionally enforced under other circumstances, it cannot be invoked to punish this demonstration which the defendant asserts is no less an expression than is speech against segregation; and this freedom of expression, like freedom of speech, is protected by the First Amendment. Citing concurring opinion of Mr. Justice Harlan in *Garner v. Louisiana*, 368 U. S. 157, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961).

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The United States Supreme Court has long ago announced that these First Amendment freedoms are protected by the Fourteenth Amendment from invasion by the States. *Edwards v. South Carolina*, 372 U. S. 229, 83 Sup. (10)

Ct. —, 9 L. Ed. 2d 697 (1963); *Thornhill v. Alabama*, supra; *Cantwell v. Connecticut*, 310 U. S. 296, 60 Sup. Ct. 900, 84 L. Ed. 1213 (1940); *DeJonge v. Oregon*, 299 U. S. 353, 57 Sup. Ct. 277, 81 L. Ed. 270 (1937); *Stromberg v. California*, 283 U. S. 359, 51 Sup. Ct. 532, 75 L. Ed. 1117 (1931); *Whitney v. California*, 274 U. S. 357, 47 Sup. Ct. 641, 71 L. Ed. 1095 (1927); *Gitlow v. New York*, 268 U. S. 652, 45 Sup. Ct. 625, 69 L. Ed. 1138 (1925).

But the right of freedom of speech is not absolute and a State may by general and non-discriminatory legislation, under its police power, regulate the exercise of that freedom. *Cantwell v. Connecticut*, supra.

Our inquiry, then, must be directed to the regulation of the constitutional guarantee and a careful consideration of whether that regulation is within the allowable area of state control. And so in this inquiry we must look to the conduct to be limited or proscribed.

The statutes in question do not come within the objection that they punish conduct which is so generalized as to be "not susceptible of exact definition" as was the case in *Edwards v. South Carolina*, supra. To the contrary, in each instance the proscribed conduct is precisely and narrowly defined for it is to "obstruct . . . any public sidewalk . . . by impeding, hindering, stifling, retarding or restraining traffic or passage thereon" in one instance which is proscribed and it is those who "under circumstances such that a breach of the peace may be occasioned

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thereby: (1) crowds or congregates with others * * * in or upon * * * a public sidewalk" who are guilty of disturbing (11)

the peace in the other instance. See also *Garner v. Louisiana*, 368 U. S. 147, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961), *Town of Ponchatoula v. Bates*, 173 La. 824, 138 So. 851 (1932).

Laws having the character of those under attack have been before the courts of last report in other States, and have been upheld as reasonable regulations in the exercise of police power. *City of Tacoma v. Roe*, 190 Wash. 444, 68 P. 2d 1028 (1937); *State v. Sugarman*, 126 Minn. 477, 148 N. W. 466, 52 L. R. A. (N. S.) 999 (1914); *Benson v. City of Norfolk*, 163 Va. 1037, 177 S. E. 222 (1934).

In the statutes under consideration there is no discrimination, but where labor picketing is concerned a clearly defined exclusion recognized in *Thornhill v. Alabama*, *supra*, is set forth.

In *Edwards v. South Carolina*, *supra*, the court announced that no infringement upon constitutional guarantees would be involved "If, for example, petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public * * *" And this is the precise nature of the regulation which these contested statutes invoke. The reasons which support such enactments are obvious and have been approved on many occasions. They are that:

"Municipal authorities, as trustees of the public, have the duty to keep their communities' streets open and available for movement of people and

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property, the primary purpose to which streets are dedicated. So long as legislation to this end does

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not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion." *Schneider v. State*, 308 U. S. 147, 160, 60 Sup. Ct. 146, 84 L. Ed. 155 (1939).

And on this authority, and others, it is manifest that the right to freely speak against segregation,* if that was the true motive of the demonstrators in the case at bar, bears no relation to facts involving two thousand persons marching against the halls of justice and obstructing the public sidewalks there in such a manner that a violation of the

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statute proscribing that conduct is manifest. These demonstrators, like other citizens, must confine their exercise of

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constitutional freedoms within lawfully regulated limits of those freedoms.

In support of the second grounds for setting aside this conviction, it is asserted that these laws and the bills of information are too vague and general and hence violate the due process and equal protection clauses of the Fourteenth Amendment.

R. S. 14:103.1 is said to be ambiguous for it is not clear whether the prosecution must show an actual disturbance or only circumstances such that a disturbance may be occasioned. In either event, however, we think there is no ambiguity in that language of the statute for to "disturb the peace" in Louisiana means "• • • to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." *Town of Ponchatoula v. Bates*, 173 La. 824, 138 So. 851 (1932). To "breach the peace" has the identical meaning in our view and the statute so declares, for it provides that "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach may be occasioned thereby" commits certain acts "shall be guilty of disturbing the peace." Because the words of the statute have a fixed, definite and commonly understood meaning and a meaning ascribed to them by this court, they are not ambiguous nor is it objectionable that the statute seeks to proscribe conduct which will result in a disturbance of the peace. The statute may lawfully have the prevention of a disturbance as its object as well as punishing (14)

an actual disturbance. Therefore the accused had adequate notice of the proscribed conduct. *Garner v. State of Louisiana*, 368 U. S. 157, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961).

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With respect to R. S. 14:100.1 the contention is made that the bill of information charging a violation of that statute is fatally defective because it fails to inform defendant of the nature and the cause of the accusation against him, though it is conceded that the statute may be sufficient to describe or legally characterize the offense. U. S. Const. amend. VI; La. Const. of 1921 art. I, §10; R. S. 15:2, R. S. 15:5 and R. S. 15:227.

The Louisiana Constitution, like the United States Constitution, provides that in all criminal prosecutions the accused has a right to be informed of the nature and cause of the accusation.

The argument is advanced here that one cannot be charged with obstruction "of a public sidewalk within the City of Baton Rouge . . ." One must be charged with obstruction of a particular sidewalk, i.e., "... that sidewalk on the West side of St. Louis Street, in the City of Baton Rouge, Louisiana, identified by municipal number 200, bounded on the North by . . . and bounded on the south by . . ." But we cannot agree with the contention; the quoted language of the bill of particulars in the beginning of this opinion refers to the sidewalk in "front of the Courthouse"; which, together with the date of the occurrence, is definite and clear and furnishes the requisite information to satisfy the constitutional test, which is threefold:

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First, the statement of the accusation should inform the accused of the charges that will be brought against him at the trial in order that he may properly defend himself. Second, the trial judge should be informed by the indictment of what the case involves, so that, as he presides and is called upon to make rulings, he may do so intelligently.

Opinion of the Supreme Court of Louisiana

Third, the indictment should form a record from which it can be clearly determined whether or not a subsequent proceeding is barred by the former adjudication.

When the accusation fulfills these purposes, it satisfies the constitutional mandate that the accused must be informed of the nature and cause of the accusation. *State v. Scheler*, 243 La. 443, 144 So. 2d 389 (1962).

The third contention that there was no evidence tending to prove the crime charged is without merit.

This court is limited in the scope of its review in criminal matters by Article VII, Section 10 of the Constitution of this State "to questions of law only." Although it is recognized in our jurisprudence that a proper interpretation of the foregoing constitutional provision permits a complaint that a conviction based upon "no evidence at all" presents the question of law whether it be lawful to convict an accused without any proof whatsoever as to his guilt, it is firmly established that it is only when there is no evidence at all upon some essential element of the crime charged that the court may set aside a verdict. But, where there is *some* evidence to sustain the conviction, *no matter how little*, this court cannot pass upon the sufficiency thereof. That comes within the exclusive province of the trial judge or jury. *State v. Copling*, 242 La. 199, 135 So. 2d 271 (1961). (16)

Undoubtedly, from the facts recited, there is some evidence. In our view there is ample evidence to sustain this conviction.

The final grounds relied upon to reverse this conviction is that racial segregation existed in the court where defend-

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ant was tried and convicted and this segregation denied him a fair trial in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

The record undoubtedly establishes that racial segregation existed in the courtroom as it had for many years.

On April 29, 1963, the United States Supreme Court held that "State-compelled segregation in a court of justice is a manifest violation of the State's duty to deny no one the equal protection of its law." *Johnson v. Virginia* 31 U. S. L. Week 3353 (U. S. April 29, 1963). But in the Johnson case the objection to segregation was made by a Negro who had been arrested for contempt of court for sitting in seats assigned for white citizens, and the arrest and conviction was for that conduct. In the case before us, there is no charge against the defendant for having violated the court-imposed seating arrangement and none of the parties upon whom the segregation was imposed are before this court in this case. Hence the Johnson case is not authority for reversing this conviction. It has not been made to appear that the segregation resulted in a miscarriage of justice to this defendant. R. S. 15:557. If it were otherwise, it would result that every Negro convicted in that court in the past would be entitled to have his conviction set aside.

For the reasons assigned the conviction and sentence are affirmed.

REHEARING REFUSED

OCT 9 1963

Opinion of the Supreme Court of Louisiana

STATE OF LOUISIANA vs. B. ELTON COX—No. 46,395.

McCALEB, J., Dissenting.

The ruling herein that the bill of information is sufficient to apprise the accused of the nature and cause of the accusation against him is in conflict with our recent decision in *State vs. Smith*, 243 La. 656, 146 So. (2d) 152, handed down on November 5, 1962.

In the *Smith* case the defendants were charged in a bill of information containing two counts with violating (1) R. S. 14:100.1 (obstructing public passages) and (2) R. S. 14:103.1 (disturbing the peace) under allegations similar to those made in the separate bills of information which have been upheld in the instant matter. The Court, after setting forth the settled jurisprudence of this State to the effect that it is not a sufficient compliance with the constitutional mandate of Section 10 of Article 1 of the State Constitution (that the accused shall be informed of the nature and cause of the accusation against him) for the bill of information to be couched in the language of the statute when the statutory words do not, themselves, set forth the elements necessary to constitute the offense intended to be punished (see, among other cases, *State vs. Verdin*, 192 La. 275, 187 So. 666; *State vs. Varnado*, 208 La. 319, 23 So. (2d) 106 and *State vs. Blanchard*, 226 La. 1082, 78 So. (2d) 181), quashed the bill of information, holding that the provisions of R. S. 14:100.1 and 14:103.1 were not specific enough to support a charge drawn in their language and that allegations of the particular facts were required in order to comply with the Constitution.

The motion to quash should be sustained.

REHEARING REFUSED

Oct 9th 1963

(16)-

Notice of Motion to Quash

TO THE HONORABLE, THE JUDGES OF THE NINETEENTH JUDICIAL DISTRICT COURT, IN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

And now into this Honorable Court, through his undersigned counsels, comes B. ELTON COX, the defendant in the above entitled and numbered cause, moves to quash the Bill of Information for the following reasons, to-wit:

-1-

That defendant denies that he violated the provision of LSA-R. S. 14:100.1 as charged in the Bill of Information. However, defendant alleges and avers that on the 15th day of December 1961, in protest of racial segregation, defendant, a citizen of the United States, together with others, did in exercise of his rights accorded defendant by and under the First Amendment to the Constitution of the United States of America, peaceably assemble on a public sidewalk within the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana.

-2-

That while the arrest and charge were for "Obstructing Public Passages", there was no commission of such crime (17)

or offense, except for the activities in which the defendant engaged to protest racial segregation, and that the use of the criminal process in such a situation denies and deprives the defendant of his rights, privileges, immunities and liberties guaranteed defendant, a citizen of the United

Notice of Motion to Quash

States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

-3-

That LSA-R. S. 14:100.1 is unconstitutional on its face, repugnant to the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States of America, in that, it expressly extends to a bona fide legitimate labor organization the rights accorded and guaranteed citizens of the United States by the First Amendment to the Constitution of the United States of America, while denying and depriving defendant, a member of the Negro race, the same rights.

-4-

That LSA-R. S. 14:100.1 is unconstitutional on its face, in that it denies and deprives defendant, a citizen of the United States of America, of due process and equal protection of the laws, guaranteed the defendant by the Fourteenth Amendment to the Constitution of the United States of America.

-5-

That if said Statute, LSA-R. S. 14:100.1, as amended, does embrace within its terms and meanings, that the defendant, by protesting racial segregation "obstructs public passages", then and in that event said Statute, LSA-R. S. 14:100.1 is unconstitutional, in that it deprives your defendant of his rights, privileges, immunities and/or liberties, without due process of law and denies him the equal pro-

Notice of Motion to Quash

tection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

-6-

That the Bill of Information is insufficient to charge an (18) offense or crime under LSA-R. S. 14:100.1, except violating the rights, privileges, immunities and liberties accorded and guaranteed the defendant, a citizen of the United States, by and under the First and Fourteenth Amendments to the Constitution of the United States of America.

WHEREFORE, your defendant, B. ELTON COX, prays that this Motion to Quash be maintained and that the said Bill of Information as to him, and as far as he is concerned be declared null and void and that he be discharged therefrom.

Attorney for Defendant:

JOHNNIE A. JONES

Robert F. Collins

Nils R. Douglas

Lolis E. Elie

2211 Dryades Street

New Orleans 13, Louisiana

(Signed) BY: JOHNNIE A. JONES

(42)

Opinion Overruling Motion

That on a subsequent day of Court a hearing was had contradictorily with the state on the said motions to Quash and that the court overruled and denied the said motions to Quash to which your defendant then and there objected and reserved a bill of exceptions to the information, the motion to Quash, the States answer to the motion to quash and to the Courts ruling denying the said Motion to Quash, and now your defendant perfects this formal bill of exceptions making a part of same the said information, the motion to Quash, the States answer to the motion to Quash, any evidence offered or testimony heard on the motion to Quash, the Courts ruling on same, and the entire record in these proceedings, and first submitting this their formal bill of exceptions to the District Attorney, now tenders the same to the court and prays that the same be signed and sealed by the judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.
JUDGE

(30)

Motion in Arrest of Judgment

Now INTO COURT, after verdict against B. ELTON COX, and before sentence the said B. ELTON COX, through undersigned counsel, and moves the Court here to Arrest Judgment herein and not to pronounce the same because of manifest errors in the record appearing to-wit:

-1-

That at the beginning of the trial (Transcript Page 4) attorney Johnny Jones moved *for the record to show* that Murphy Bell, Attorney, was associated on the case with him.

That the court ordered a minute entry to that effect.

That Attorney Jones also asked for the same record to show that the courtroom was segregated to which request the District Attorney objected and to which the court replied:

"Also let the record show that it has been the practice and custom in the East Baton Rouge Parish Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white *and let the record especially show* that the judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people".

(31)

That on Wednesday, January 31, 1962 (transcript page 278) Johnny Jones renewed his objection to the segregated courtroom, in the following words:

Motion in Arrest of Judgment

"Your Honor, I want to renew our objection about court being segregated and I want to reserve a formal bill".

To which the court replied:

"Well, I just don't think it makes any difference I don't know if he has got any right to a bill on it or not, but I will let him perfect on it, if he wants to".

Then after some discourse between Mr. Pitcher and Mr. Jones the court said:

"Let it stand as it is".

The above statements are held by counsel to constitute a correct reserving of an objection and the reserving of a Bill of Exceptions to the overruling of the Motion to Desegregate the Courtroom. If not so deemed, then it is our alternative position that the remarks of the court constitutes a part of the record which may properly be presented in review for error in a Motion in Arrest of Judgment.

Thus the record shows on its face that defendant was deprived of rights guaranteed him under the equal protection of the laws and due process of law clauses of the Fourteenth Amendment to the Constitution of the United States.

-2-

That the Bills of Information are insufficient to charge a crime under L. S. A.-R. S. 14:103.1 and 14:100.1.

-3-

That the convictions of defendant for violation of L. S. A.-R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A.-R. S. 14:100.1 denied defendant rights guaranteed

Motion in Arrest of Judgment

to him under the first amendment to the Constitution of the United States.

(32)

That the convictions of defendant for violation of L. S. A.-R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A.-R. S. 14:100.1 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

-5-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that they were enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

-6-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that they were arbitrarily, capriciously and discriminately enforced against persons peacefully exercising their rights of freedom of speech in protest against racial segregation.

-7-

That the statutes under which defendant is convicted and the Bills of Information filed thereunder are unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statutes could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

Motion in Arrest of Judgment

-8-

That the judgments are contrary to the law and the evidence in that there is no evidence to support a finding of guilt under either statute thus violating defendants rights under the Due Process Clause of the Fourteenth Amendment.

-9-

That the judgments are unconstitutional in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that (33)

it is constitutionally impossible to charge and convict a defendant for disturbing the peace when the body of the statute prohibits crowding or congregating" . . . under circumstances such that a breach of the peace *may* be occasioned thereby.

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause, if any he has, why a Motion in Arrest of Judgment should not be granted in these proceedings.

ROBERT F. COLLINS

NILS R. DOUGLAS

LOUIS E. ELIE

2211 Dryades St., N. O. La.

(Signed) By Nils R. Douglas

MURPHY W. BELL

971 South 13th St., B. R., La.

OF COUNSEL:

CARL RACHLIN

280 Broadway

New York, New York

(56)

Opinion on Motion in Arrest of Judgment

The Court after hearing the said Motion in Arrest of Judgment of the defendants, denied and overruled the same, and to such action of the Court, counsel for the defendant then and there objected and reserved a formal bill of exceptions, and now counsel perfects this his formal bill of exceptions to the overruling and denying of the said Motion in Arrest of Judgment and makes a part hereof, the bill of information, the Motion to Quash, any evidence or testimony heard or offered on the trial of these cases on the merits, the Motion in Arrest of Judgment, the Motion For A New Trial, the Courts ruling on the Motion In Arrest Of Judgment, the Courts ruling on the Motion For a New Trial and the entire record in these proceedings and first submitting this his bill of exceptions to the District Attorney, now tenders the same to the court and prays the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided which is done accordingly this 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.
J U D G E

(35)

Motion for New Trial

NOW INTO COURT, through undersigned counsel comes B. ELTON COX, the defendant in the above entitled and numbered cause and moves the court that the verdict rendered herein be set aside and a New Trial ordered, for the following reasons:

-1-

That the Bills of Information are insufficient to charge a crime under L. S. A. R. S. 14:103.1 and 14:100.1.

-2-

That the convictions of defendant for violation of L. S. A.-R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A.-R. S. 14:100.1 denied defendant rights guaranteed to him under the first amendment to the Constitution of the United States.

-3-

That the convictions of defendant for violation of L. S. A.-R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A.-R. S. 14:100.1 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

-4-

That the courts overruling of defendants objection to the segregated seating in the courtroom to which ruling de-

(36)
 fendant reserved a formal Bill of Exceptions was error and prejudicial to the defendant in that it denied him the right to a fair trial guaranteed to him by Article I Section 6 of the Constitution of the State of Louisiana. Said error further denied defendant the equal protection of the laws

Motion for New Trial

and due process of law guaranteed to him by the first section of the Fourteenth Amendment to the Constitution of the United States.

-5-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that they were enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

-6-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that they were arbitrarily, capriciously and discriminately enforced against persons peacefully, exercising their rights of freedom of speech in protest against racial segregation.

-7-

That the statutes under which defendant is convicted and the Bills of Information filed thereunder are unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statutes could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

-8-

That the judgments are contrary to the law and the evidence in that there is no evidence to support a finding of guilt under either statute thus violating defendant's rights under the Due Process Clause of the Fourteenth Amendment.

Motion for New Trial

(37)

-9-

That the judgments are unconstitutional in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that it is constitutionally impossible to charge and convict a defendant for disturbing the peace when the body of the statute prohibits crowding or congregating "... under circumstances such that a breach of the peace *may* be occasioned thereby".

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause, if any he has, why a New Trial should not be granted in these proceedings.

ROBERT F. COLLINS

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(Signed) BY: NILS R. DOUGLAS

MURPHY W. BELL

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La.

OF COUNSEL:

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New York, New York

(48)

Opinion on Motion for New Trial

The Court, after hearing the said Motion of the defendant for a New Trial, denied and overruled the same, and to such action of the court, counsel for the defendant then and there objected and reserved a formal bill of exceptions and counsel now perfects this his formal bill of exceptions to the overruling of the Motion for a New Trial and makes a part hereof the bill of information, the motion to quash, the Courts ruling overruling the motion to quash and any evidence offered or testimony heard on the trial of the cases on the merits, the motion for a New Trial, the courts ruling on the motion for a New Trial, and the entire record in these proceedings, and first submitting this his bill of exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.

J U D G E

Excerpts From Transcript of Trial

(4)

Mr. Jones: Your Honor, I would like to move to associate attorney Murphy Bell on the case with me.

The Court: All right.

Mr. Jones: I would like for the record to show that he is now being associated on the case.

The Court: Show a minute entry to that effect.

Mr. Pitcher: No objection.

Mr. Jones: I would also like for the record to show that

(5)

this case is one where the defendant is being charged for the protest of racial segregation and that within the Court-house itself that the defendant is being tried in that racial segregation is being practiced and that there are interested parties, citizens on the outside of court waiting—

Mr. Pitcher: I object to the remarks of counsel—

Mr. Jones: —who are interested in the case and that there are seats vacant in the court which are being reserved for the whites and that the Negro citizens who are interested in the case and the outcome of the case are not permitted to utilize these seats. I would like for that to be made a part of the record.

The Court: Also, let the record show that it has been the practice and custom in the East Baton Rouge Parish

(6)

Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white, and let the record especially show that the judge in this case ordered that half of the seats that were formerly reserved

Excerpts From Transcript of Trial

and available for white people are now being occupied and filled by colored people.

Mr. Pitcher: If Your Honor Please, while Your Honor is well aware of what is going on, I am sure that the Supreme Court of the United States will not be, and for that reason, I ask that Your Honor appoint a Deputy Sheriff to personally count the number of people in this room to be able to testify as to the number of people present in (7)

court and the seats available and the number of white people present. I think the State is entitled to that.

The Court: All right.

(A Deputy Sheriff was so appointed by the Court at this time and ordered to count the people in the courtroom while the proceedings were going on.)

Mr. Jones: If the count is to be made, Your Honor, we would also like to make a count of those who are waiting on the outside.

The Court: Count them, too.

Mr. Jones: And count the number of seats that are still available.

The Court: All right.

(340)

*Excerpts From Transcript of Trial***Testimony of Thomas Terrell Edwards, Captain in Charge of Jail, and Herman Thompson***By the Court:*

Q. In response to a request of the Court did you count the number of colored people sitting in the courtroom at the time court opened on, what day was that--Monday?

A. Day before yesterday.

Mr. Jones: Monday, the twenty-ninth.

Q. Did you do that? A. Yes, sir, I did.

Q. And how many people were sitting in here? A. There was 127 colored and 8 whites in the courtroom behind the rail.

Q. Behind the rail. A. At the first count I made. Now, I made two, If Your Honor remembers. The second count there was the same number of colored, 127, and there were 14 whites.

Q. How much later was that? A. Oh, about two hours, if I recall correctly.

Q. When court opened there were 127 colored and 8
(341)

whites, is that correct? A. Yes, sir.

Q. And approximately how many seats were reserved by the Court for whites? A. Forty-two.

Q. How many colored were on the outside? A. Eighty-eight.

Q. Eighty-eight? A. Yes, sir.

By Mr. Jones:

Q. Would they be waiting to get in, sir? A. None of them indicated that they wanted to get in. They were standing in the hall is all I could tell.

Excerpts From Transcript of Trial

By the Court:

Q. Was that at the same time, because it looked like to me that there were more than eight-eight. A. At the time I counted, sir, there were just eighty-eight. Now, I was told—

Q. How much later was that than when I first told you—when we opened Court, how much longer after that did you go out and count? A. Well, I made the second count in the courtroom and then I went outside and made a count, and I believe it was approximately two hours between the two counts. I am guessing at that time. At the time I really don't recall, sir.

(342)

Q. At the time that the court was opened, wasn't there more out there in the hall than there were at the time you took the count? A. I don't know, sir.

Q. I was told there were. A. I was told that at several times in the afternoon there 200 or 250, but I didn't see them. I didn't go out there.

Q. Do you know anyone who could make an estimate to that effect among the officers? A. Captain Henderson or Captain Thompson could.

The Court: All right, is that all?

By Mr. Jones:

Q. Did you reserve any seats in the courtroom for the white people? A. I didn't reserve any seats for anyone.

Excerpts From Transcript of Trial

Q. Was there any seats in the courtroom reserved for the whites then? A. No, sir, His Honor—

The Court: I will answer that from the bench.
I reserved one-half of what was formerly the white
(343)

section for white people and I gave the other half of it to the colored people.

WITNESS EXCUSED

The Court: Captain Thompson.

HERMAN A. THOMPSON, called as a witness by the Court, being first duly sworn, testified as follows:

Direct examination by the Court:

Q. How many colored people were out in the hall at the time court started on Monday? A. There were two hundred or better, Judge.

Q. Is that your estimate? A. Yes, sir, that was why we called the fire marshals.

Q. Could it have been as many as 250? A. It could very easily.

Q. Could it have been more than 250? A. They were solid from this courtroom door about four foot out from the door down to the Grand Jury room, and there were some of them sitting on benches down the hall.

Excerpts From Transcript of Trial

Q. Did you clear a corridor between them for a passage-
(344)

way to the door here? A. We were having difficulty. That is why we called the fire marshals in order to enforce the fire laws.

Q. How long did a crowd of that size remain outside?
A. I would say for at least two hours.

By Mr. Pitcher:

Q. Captain, at the time there were 250 people in the hall, was that the same time that Captain Edwards has said there were 127 in the courtroom? A. That is correct, sir.

Q. And there were only eight white people in it at that time? A. That is correct, sir.


Mr. Pitcher: That's all. Your witness.

A. (Directed to the Court) Do you want what you asked for yesterday?

By the Court:

Q. What is that? A. You asked how many vacant seats there were.

Q. What time was it? A. At 11:15 A. M. yesterday you asked me and there were twenty vacant seats and only five waiting outside, and out of the five we asked—one was Reverend Johnson and he said he didn't care to come in.



No. [REDACTED]

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FILED

MAR 19 1964

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

B. ELTON COX,

Appellant,

against

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

JURISDICTIONAL STATEMENT

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1963

No. _____

B. ELTON COX,

Appellant,

against

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of Louisiana entered in the above-entitled case on November 12, 1963, affirming a conviction for illegally demonstrating near a courthouse rendered by the District Court for the 19th Judicial District, Parish of East Baton Rouge, Louisiana (hereinafter referred to as the "District Court").

CITATIONS TO OPINIONS BELOW

The oral opinion of the judge of the District Court given at the end of the trial of this case is unreported and is printed in the Appendix at p. 2a. The opinion of the

Supreme Court of Louisiana affirming the judgment of the District Court on appeal, reported in — La. —, is printed in the Appendix at p. 6a.*

JURISDICTION

Appellant was convicted under a Louisiana statute, L. S. A.-R. S. 14:401, prohibiting demonstrations in or near a courthouse of the State of Louisiana, with the intent of interfering with, obstructing or impeding the administration of justice or of influencing any judge, juror, witness or court officer in the discharge of his duty, which is set out in the Appendix at p. 1a. The judgment of the Supreme Court of Louisiana affirming the conviction was entered on November 12, 1963, and rehearing was denied by that court on December 20, 1963. The jurisdiction of this court to review the judgment by appeal in this case is conferred by Title 28 of the United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the decision on appeal in this case: *Cantwell v. Connecticut*, 310 U. S. 296 (1940); *Winters v. New York*, 333 U. S. 507 (1948); *Herndon v. Lowry*, 301 U. S. 242 (1937).

* The Rev. Mr. Cox was convicted on two other counts, for obstructing the sidewalk and breach of the peace at the same trial in the District Court. These convictions were reviewed by the Supreme Court of Louisiana on supervisory writs of mandamus certiorari and prohibition, pursuant to Article VII, Section 10, of the Louisiana Constitution. The convictions were affirmed, La. , 156 So. 2d 448 (1963), and a jurisdictional statement for appeal was filed in this Court on January 8, 1964.

QUESTIONS PRESENTED

Whether the Louisiana statute regarding parades in or near a courthouse, L. S. A.-R. S. 14:401, by reason of its vagueness and uncertainty, is repugnant to the due process clause of the Fourteenth Amendment to the Constitution.

Whether the Louisiana statute regarding parades in or near a courthouse, L. S. A.-R. S. 14:401, as interpreted and applied to appellant by the courts of Louisiana, is repugnant to the due process clause of the Fourteenth Amendment to the Constitution, because it infringes his right of free speech and free assembly, and to petition for redress of grievances.

Whether the discriminatory application of the Louisiana statute regarding parades in or near a courthouse L. S. A.-R. S. 14:401, has denied appellant the equal protection of the laws under the Fourteenth Amendment to the Constitution.

Whether appellant was denied equal protection of the laws and due process of law under the Fourteenth Amendment to the Constitution by being tried in a court room that was segregated due to state action.

STATUTES INVOLVED

The statutory provision involved is Louisiana Statutes Annotated, R. S. 14:401. It is printed in the Appendix at p. 1a.

STATEMENT

On December 14, 1961, twenty-three youngsters who were picketing stores in the downtown area of Baton Rouge, Louisiana, in protest against segregation and discrimination against Negroes, were arrested (T. 348, 400, 458)* and were incarcerated in the jail adjacent to the District Courthouse in Baton Rouge (T. 348, 466). Shortly before noon the following day, students from a nearby Negro college, Southern University, began to gather about the old Capitol Building in Baton Rouge (T. 251, 437, 510-512). None of the twenty-three arrested the previous day was being tried or arraigned at that time (T. 201-203, 346-347). About noon the students marched down to the Courthouse under the leadership of the appellant, the Rev. B. Elton Cox, a field secretary for the Congress of Racial Equality (T. 468, 513). Mr. Cox conferred with the Sheriff, the Chief of Police and other law-enforcement officers, and explained to them that the students intended to demonstrate in protest against segregation and discrimination in the stores and against the arrest of the pickets. He further presented a program for the demonstration (T. 351, 371, 470, 515). The Sheriff stated on cross-examination that he had had "no objection" to the demonstration under that program (T. 363-364). The Chief of Police allowed seven minutes for the demonstration (T. 101, 516-517), and lim-

*The transcript of the trial in the District Court, though made by a court stenographer, is not physically part of the record before the Louisiana Supreme Court. To supplement the record, referred to herein by the symbol "R-", the transcript of trial which was submitted to this Court in a companion case, *Cox v. Louisiana*, is referred to by the symbol "T-".

ited it to the West side of the street, opposite the Court-house (T. 371, 516).

The students, more than fifteen hundred of them (T. 51, 71, 269, 313), assembled on the sidewalk on the West side of the street. A group of curious white people gathered on the opposite side of the street (T. 20, 28, 167). More than seventy-five policemen and sheriff's deputies were present, who, according to the inspector who was in charge of the policemen, "could handle any situation that should arise" (T. 329). No violence of any kind occurred during the demonstration; on the contrary, all testimony proved that the Rev. Mr. Cox maintained control of the students at all times (T. 38, 107, 257, 318, 355). In accordance with the program described to the Sheriff the students pledged allegiance to the flag of the United States, recited the Lord's Prayer, exhibited signs protesting segregation and sang freedom songs. In response the students in the jail (the same ones who had been arrested the previous day) began to sing (T. 46), and, upon hearing the prisoners, the demonstrators uttered a cheer (T. 54, 60, 353). Mr. Cox made a speech (T. 42, 235, 255, 325, 516-518) which not only contained nothing of violence in it (T. 29, 44, 158, 268, 302), but in fact directly forbade violence (T. 37, 299, 363). Mr. Cox advised that if any of the demonstrators should be attacked, he was not to retaliate. According to Cox's own testimony, with which other witnesses were in agreement (T. 29, 37, 53, 105, 153, 196, 272-3), he said at the close of his speech:

"* * * all right. It's lunch time. Let's go eat. There are twelve stores we are protesting. A number

of these stores have twenty counters, they accept your money from nineteen. They won't accept it from the twentieth counter. This is an act of racial discrimination. These stores are open to the public. You are members of the public. We pay taxes to the Federal Government and you who live here pay taxes to the state." (T. 518)

That was the sticking-point for the Chief of Police and the Sheriff (T. 364, 376), who then commanded the demonstrators to break up the demonstration. Tear gas was released into the group of students, and it then broke up immediately (T. 377).

Mr. Cox was arrested and charged with criminal conspiracy, breach of the peace, obstructing the sidewalk, and demonstrating in front of a courthouse with the intent of interfering with obstructing and impeding the administration of, or of influencing a judge, witness or court officer. The trial took place without a jury on January 29 through 31, 1962, in the District Court at Baton Rouge, the very building before which the demonstrators had gathered. The criminal conspiracy charge was dismissed, but Cox was convicted on the other three counts. In the course of his opinion in regard to obstructing justice by demonstrating in or near a courthouse, the judge said:

"Now, what do people do when they come and parade in front of the Courthouse? I was not a witness to the demonstration myself personally, but I was present in the Courthouse shortly before it occurred. I was present in this Courthouse when evidently the police had gotten notice that some demonstration

was impending, and my reaction was to get away from it as fast as I could. If you asked me what I was afraid of, I can tell you best by saying that having lived here in the South all of my life and being present around a demonstration of some 1,500 colored people who are protesting against racial discrimination and being a part of this community and living in this community where I know that especially of late that there is tension between the races, I felt that it would be unpleasant in some way or it would be some unpleasant thing to me to see; and because I know that there is tension between the races, I think I felt apprehensive that trouble or violence could erupt from such a situation. That is what I felt in my heart and that is why I left, because I didn't want to be anywhere near or in connection with it. I can say that it had influence on me. I can say that it made me fearful. Perhaps a better word would be 'apprehensive,' that there might be some racial violence. I can say as a judge that that is the way I felt. With all my heart I can say that. Then when I try to think of, if you want to protest, why protest around the Courthouse, I get the feeling that there is some subtle intimidation of me or of anyone of us who is responsible for upholding the laws of the State of Louisiana and maintaining, according to certain of our laws, segregation." (T. 547-49; Appendix at pp. 3a-4a)

For obstructing justice, Cox was sentenced* to serve one year in jail and pay a fine of \$5,000.00, or in default thereof

* The Supreme Court of Louisiana reviewed the sentencing procedure in this case, and found it to be invalid. *State v Cox*, 243 La. 917, 148 So. 2d 600 (1962). The appellant was subsequently re-sentenced.

to serve one year additional. The obstructing justice charge was reviewed in the Louisiana Supreme Court by way of appeal, and the conviction was affirmed. It is this conviction of which review is sought in this Court.*

The validity of the statute here involved, L. S. A.-R. S. 14:401, was called into question because of its repugnancy to the Constitution of the United States, and other questions were raised in the District Court by a motion to quash (R. 22) motion in arrest of judgment (R. 13) and a motion for a new trial (R. 18). Each of these motions was denied, and together with the opinions of the District Court (R. 26, 31, 37), they appear in the Appendix at pp. 22a-35a. In appellant's appeal to the Louisiana Supreme Court from the conviction of obstructing justice, the validity of the statute was again questioned on the ground of repugnancy to the Constitution of the United States. The decision of the Louisiana Supreme Court was in favor of the validity of the statute.

The record is clear that the courtroom was segregated by order of the District Court judge. The judge took judicial notice of this fact, stating:

"The Court: Also, let the record show that it has been the practice and custom in the East Baton

* For breach of the peace and obstructing the sidewalks, Cox was sentenced to serve a total of nine months in jail, and pay a fine of \$700.00, or in default thereof to serve nine months additional. The Supreme Court of Louisiana reviewed the convictions by way of application for writs of mandamus certiorari and prohibition, the convictions were affirmed, *State v. Cox*, — La. —, 156 So. 2d 448 (1963), and a notice of appeal to this court has been filed.

Rouge Parish Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white, and let the record especially show that the judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people." (T. 5-6, Appendix at pp. 36a-37a)

The Deputy Sheriff in charge of the jail and a second deputy testified as to the composition of the courtroom, the numbers of empty seats reserved for whites, and the number of colored people waiting in the corridors of the courtroom (T. 340-345). These passages in the record appear in the Appendix at pp. 36a-41a. The question of the fairness of the trial was also raised in the motions in the District Court and in the application to the Louisiana Supreme Court.

THE QUESTIONS ARE SUBSTANTIAL

1. Unconstitutionality of Statute

The non-violent demonstration which occurred in this case across the street from the District Courthouse in Baton Rouge is, like other peaceful forms of expression, part of the "free trade in ideas" which is protected by the guarantee of freedom of speech and of assembly in the First Amendment. *Edwards v. South Carolina*, 372 U. S. 229 (1963). A statute which may affect an area of protected expression must be "• • • narrowly drawn so as to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State • • •"

Cantwell v. Connecticut, 310 U. S. 296, 311 (1940). This standard is not altered by the simple fact that the demonstration in this case took place across-the street from a courthouse and partly in protest against an arrest of prisoners incarcerated in a jail attached to the courthouse. This Court has many times dealt with the constitutional problem presented in this case, that of reconciling the right of the courts to be free of intimidation with the right of freedom of expression " * * * in the broadest scope compatible with the supremacy of order * * *." *Pennekamp v. Florida*, 328 U. S. 331, 334 (1946). While the present case, that of criminal sanctions for a protest against an arrest, has not been presented to this Court, the same constitutional question has been presented in the cases concerning the sanction of contempt for protest against actions taken by courts in cases pending before them. In a long line of cases, this Court has held that the standard to be applied in determining whether an expression of opinion upon a pending case may be punished by the state is whether that expression presents a clear and present danger to the administration of justice. *Wood v. Georgia*, 370 U. S. 375 (1962); *Craig v. Harney*, 331 U. S. 367 (1947); *Pennekamp v. Florida*, 328 U. S. 331 (1946); *Bridges v. California*, 314 U. S. 252 (1941). The standard applicable in such cases was clearly stated in *Craig v. Harney*, *supra*, and was reaffirmed in *Wood v. Georgia*, *supra*:

"The fires which [the expression] kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not

be remote or even probable; it must immediately imperil." 331 U. S. at 376, 370 U. S. at 385.

The Louisiana statute prohibiting demonstrations in or near a courthouse "with the intent of interfering with, obstructing or impeding the administration of justice, or with the intent of influencing any judge, juror, witness or court officer, in the discharge of his duty" is unconstitutional on its face under the rigorous standard of clear and present danger established by this Court in cases involving protests directed at the administration of justice. Each of the publications found by this Court to be protected under the First Amendment in cases of contempt by publication, e.g., *Pennekamp v. Florida*, 332 U. S. 331, 346 (1946), was intended as a protest against some aspect of the administration of justice in the hope of affecting that administration, whether directly or indirectly. The phrase "with the intent of influencing any judge, witness or court officer in the discharge of his duty" would cover those cases of contempt. On its face, therefore, the phrase includes forms of expression which are protected by the First Amendment and it is an infringement of the freedom of speech. *Winters v. New York*, 333 U. S. 507 (1948).

This infirmity in the language of the statute the courts of Louisiana might perhaps have cured, see *Winters v. New York*, *supra*, either by limiting the application of the statute as a whole to situations which present a clear and present danger to the administration of justice, or by limiting the meaning of the "intent" necessary to this statute to such situations. Cf. *American Communications Association v. Douds*, 339 U. S. 382, 407-408 (1950).

The courts of Louisiana failed to take either course. In considering the statute as a whole, the judge of the Louisiana District Court said that he had the "feeling" that the demonstration was " * * * some subtle intimidation of me or of anyone of us who is responsible for upholding the laws of the State of Louisiana * * * " (Appendix at p. 4a). He did not consider whether the protest presented a clear and present danger to the administration of justice, nor whether it could possibly have presented such a danger, at a time when the prisoners were not being arraigned or tried before his court.

In affirming the decision of the District Court, the Louisiana Supreme Court failed in its turn to apply a constitutionally acceptable standard. It held only that the state has a legitimate right under its police power to protect the impartial administration of justice, without recognizing that the police power is limited in such cases to averting clear and present danger to the administration of justice. In this connection, the Louisiana Court said:

"In considering similar contentions urged in the two companion cases, we recognized as did the court below, that under decisions of the Supreme Court of the United States the freedoms guaranteed individuals under the First Amendment are protected by the Fourteenth Amendment from invasion by the states, citing a number of authorities whereby this country's highest court established this rule in the jurisprudence. But we also pointed out that the United States Supreme Court has recognized that the right of freedom of speech and the press is not

absolute and held that a state may, by general and nondiscriminatory legislation, regulate the exercise of that freedom under its police power. *Cantiwell v. Connecticut*, 310 U. S. 296.

“Unquestionably these rights, freedoms or privileges of peaceful assembly and of expression and discussion—however they may be considered—as well as the impartial administration and justice that is guaranteed under the Sixth Amendment to the Constitution of the United States, are all vital and important to the concepts on which this nation was founded. To paraphrase Mr. Justice Frankfurter in his concurring opinion in *Pennekamp v. Florida*, the claims with which we are faced are not those of right and wrong, but of two rights, each highly important to the well being of society, the core of the problem being to arrive at a proper balance between basic conditions of our constitutional republic—freedom of utterance and peaceful assembly on the one hand, and the proper and impartial administration of justice on the other, and since the latter is one of the chief tests of the true concepts of our constitutional government, it should not be made unduly difficult by irresponsible actions.” — La. at —, Appendix at p. 10a.

This construction of the statute, like that of the District Court, is so broad as to draw within its scope protected forms of speech, because it fails to limit the effect of the statute to cases which present a clear and present danger to the administration of justice.

In defining intent in the clause: “with the intent of interfering with, obstructing, or impeding the administra-

tion of justice, or *with the intent* of influencing any judge, juror, witness or court officer in the discharge of his duty" (emphasis supplied), the Louisiana courts again ran afoul of standards set forth in the decisions of this Court. The meaning of this phrase could have been narrowed so as to include only situations in which the accused, by unmistakable acts, shows his intention to affect the outcome of a case or otherwise interfere with the administration of justice. See *Yates v. United States*, 354 U. S. 298, 318 (1957) (narrow construction of the meaning of "teaching and advocacy" under the Smith Act so as to cover only situations which present a clear and present danger); *Winters v. New York*, 333 U. S. 507 (1948). The decisions of the Louisiana courts exclude such a narrow interpretation, however. This is not a case in which the demonstration was intended to disrupt a trial, and nothing was said during the demonstration which was construable as intimidation of any court. The prisoners whose incarceration was being protested were not on trial, and their trial was not immediately in prospect (T. 201-203). All the witnesses both for the prosecution and the defense agreed that the purpose of the protest demonstration was peaceful (T. 29, 37, 44, 158, 268, 299, 302, 363). Yet both the District Court and the Louisiana Supreme Court found that the necessary intent to obstruct justice or influence an officer of the court was proven. Both courts in effect found *ipso facto* that any demonstration near a courthouse in protest against an arrest, regardless whether the trial of the person arrested is in progress or even imminent, is enough to make out the necessary intent. This ruling utterly fails to restrict the

meaning of intent to obstruct justice or influence a court officer to situations which present a clear and present danger to the administration of justice. Such a vague definition of intent as has been applied here by the Louisiana courts acts as an unconstitutional restraint of freedom of speech. *Pennekamp v. Florida*, 328 U. S. 331, 347 (1946).

The construction by the District Court and the Louisiana Supreme Court of the statute as a whole, and of the clause regarding intent in particular, is so general, in the end, as to render the statute too vague and indefinite to give fair notice of what acts may be punished under the statute. It is plain that the statute cannot punish speech which is protected by the First Amendment. It is therefore impossible under the interpretations of the District Court and the Louisiana Supreme Court for any person to ascertain what conduct is prohibited by the statute. *Winters v. New York*, 333 U. S. 507 (1948); *Herndon v. Lowry*, 301 U. S. 242, 261 (1937).

The only evidence of a danger to the administration of justice or of intent to obstruct justice or influence an officer of the court presented against the Rev. Mr. Cox was the simple fact that he had led a protest, in a manner prescribed by the police, across the street from a courthouse in protest against the arrest of prisoners then incarcerated in the jail attached to the courthouse. To treat this simple demonstration as evidence of such a danger or of intent to obstruct justice would infringe the right of freedom of speech, *Pennekamp v. Florida*, 328 U. S. 331, 347 (1946), and thus Mr. Cox has been convicted without evidence of any crime which could constitutionally be proscribed by the legislature

of Louisiana. Such a conviction constitutes a denial of due process of law under the Fourteenth Amendment. *Thompson v. Louisville*, 362 U. S. 199 (1960), *Garner v. Louisiana*, 368 U. S. 157 (1961); *Taylor v. Louisiana*, 370 U. S. 154 (1962).

While this statute has not previously been construed by the Supreme Court of Louisiana, we must assume that merely demonstrating to protest an arrest is not, "because it could not be", *Thompson v. Louisville*, 362 U. S. 199, 206 (1960), enough to show a clear and present danger to the administration of justice or of intent to obstruct justice or influence an officer of the court. Concepts applied by the Louisiana Supreme Court in analogous cases support this. In *Graham v. Jones*, 200 La. 137, 159, 171, 179, 183, 7 So. 2d 688, 695, 699, 702, 703 (1942), the clear and present danger rule outlined by this Court in *Bridges v. California*, 314 U. S. 252 (1941) was applied to dismiss five convictions for contempt by publication. In *State v. Daniels*, 236 La. 998, 109 So. 2d 896 (1959), a rigorous standard of intent was required for a statute similar to the one in this case. In that case the defendant, a convict who had struck a prison guard, was charged with the crime of "Public Intimidation", being the use of force upon a public officer "with the intent to influence his conduct in relation to his position, employment, or duty." L. S. A.-R. S. 14:122. The Louisiana Supreme Court reversed the conviction on the ground that merely to have struck the guard was not enough to show the required intent. The Louisiana Supreme Court has failed in this case to apply the rigorous standard for clear

and present danger and for intent which it has established in similar cases, and it has thus affirmed a conviction of crime based upon no evidence of any acts which might be punished as criminal under the United States Constitution or the laws of Louisiana.

Discriminatory Administration of the Law

Passing from the construction of the statute involved here to the manner of its administration, the facts in this case show that the statute was used by the state and city authorities to discriminate against active campaigning for integration of the races. The demonstration in this case was carried out in the manner prescribed by the chief of police and the sheriff, and they were willing to permit and did permit the demonstration until Mr. Cox advocated a sit-in at lunch-counters; only then did the demonstration seem to them a violation of law (T. 364, 376). Under the decisions of this Court, to permit a demonstration until it advocates ideas with which the authorities or the general public disagree is a discriminatory application of the law which constitutes both an interference with freedom of speech and a denial of equal protection of the laws under the Fourteenth Amendment. See *Niemotko v. Maryland*, 340 U. S. 268 (1951); *Yick Wo v. Hopkins*, 118 U. S. 356 (1886); *Terminiello v. Chicago*, 337 U. S. 1 (1948).

The question of the repugnancy to the Constitution of the Louisiana statute concerning demonstrations in or near a courthouse, L. S. A.-R. S. 14:401 both on its face and as applied, is a most important and pressing problem. Like

the breach of the peace statute under which the Rev. Mr. Cox has been convicted in the companion case to this, arising out of the same demonstration,* the statute in this case is a powerfully repressive influence on freedom of speech. The peaceful protest against segregation is surely one of the most important means of political expression of our time, and the question whether a statute may validly be drawn or construed and applied in such a way as to kill that form of expression is one of the most important problems before this Court. Unless the decision of the Supreme Court of Louisiana is reversed, it will act as a prior restraint on speech against racial discrimination. *Smith v. California*, 361 U. S. 147 (1959).

2. Segregated courtroom

The segregation in the courtroom at the trial of this case, though it presents no appealable issue under 28 United States Code §1257(2), does present a most urgent federal question affecting the administration of justice. The case of *Johnson v. Virginia*, 373 U. S. 61 (1963), in which this Court reversed the conviction of the defendant, a Negro, for contempt for sitting in the section reserved for whites in a state courtroom, has established the proposition that segregation of a courtroom by state action is a denial of equal protection of the laws.

* A jurisdictional statement for appeal to this Court was filed on January 8, 1964. The statute mentioned is L. S. A.-14:103.1 (1960).

It is perfectly clear on the record in this case that the courtroom here, like that in the *Johnson* case, was segregated by action of the judge (T. 5; *supra*, p. 8). In the companion case to the present one, the Louisiana Supreme Court distinguished the *Johnson* case on the ground that the defendant here was not the person discriminated against in the courtroom. — La. at —, 156 So.2d 448, 456 (1963) Appendix at p. 20a. This decision begs the question whether racial discrimination against persons in the courtroom is not also discrimination against the defendant. It leaves open entirely the question whether the appellant here had a fair trial, or could have had one, in a courtroom blatantly administered in an unconstitutional way. Whether or not a court may have the objectivity necessary for the administration of due process of law when trying one who protests against segregation and discrimination where the judge himself maintains a segregated courtroom is a question which should be, we urge, decided by this Court.

It is evident, at the outset, that a denial of equal protection of laws in the administration of justice is a denial of equal protection of the laws to the defendant tried under such administration, see *Eubanks v. Louisiana*, 356 U. S. 584 (1958) (discrimination in selection of grand and petit jury). Moreover, in the cases of demonstrations against segregation, this unconstitutional administration of justice is a denial of due process of law for the reason that it affects the decision of the trial court. In a case such as this, where the trial judge is required to decide whether or not a demonstration against segregation constitutes a clear and present danger to the administration of justice, *Wood v.*

Georgia, 370 U. S. 375, 385 (1962), a question entailing a large area of discretion about the effects of segregation and integration upon the public mind, the presence of segregation in the courtroom must necessarily affect his decision. If he not only has the segregated courtroom before his eyes, but administers it as well, as he did here (T. 5, *supra*, p. 8), the effect is still stronger. If the unconstitutional administration of the court affects its decisions upon the law and the facts, it is a denial of a fair trial under the due process clause of the Fourteenth Amendment to the Constitution. Cf. *Irvin v. Dowd*, 366 U. S. 717 (1961).

The segregation of the courtroom, furthermore, has denied the Rev. Mr. Cox a public trial, within the meaning of the Sixth Amendment. The requirement of a public trial is applicable to trials in state courts under the due process clause of the Fourteenth Amendment, *Re Oliver*, 333 U. S. 257 (1948). Two of the bases for the requirement of a public trial, as outlined by Dean Wigmore, are to discover new witnesses and make existing witnesses disinclined to falsify. Wigmore on Evidence, Section 1834 (1940 Ed.). These two elements of the requirement have been infringed in this case, where the officers who made a count of the persons present, inside and outside the courtroom, found that colored people were waiting to get in, while seats were empty in the courtroom (T. 340-341, in the Appendix at pp. 38a-41a). These people, had they been in the courtroom, might have influenced the witnesses who appeared toward greater veracity, and more important, they might have included among themselves some further wit-

nesses. To exclude them in a discriminatory way was to deny the petitioner the essential elements of a public trial. Cf. *United States v. Kobli*, 172 F. 2d 919 (3 Cir. 1949).

The question whether it is a denial of equal protection of the laws and of a fair and public trial to try a case involving freedom of speech about racial discrimination in a courtroom segregated by state action, has not been squarely presented to this court before. It raises very basic questions as to what sanctions ought to be used by the federal government to prevent unconstitutional acts of segregation by the states and what effect such unconstitutional segregation has upon the state administration of criminal justice. This Court has the power to reverse a state conviction, because of the unconstitutional administration of justice, in the effort to impose effective sanctions for the violation of constitutional rights, *Mapp v. Ohio*, 367 U. S. 643 (1961), and in a case such as this, where the unconstitutional administration must influence both the decision of the judge and the publicity of the trial, it is essential that the power be used.

It is submitted that the statute here involved, L. S. A.-R. S. 14:401, like the statutes involved in the companion case arising out of the same demonstration, is repugnant to the right of freedom of speech under the Constitution of the United States, and that the decision of the Louisiana Supreme Court in favor of the validity of this statute is in error. It is further submitted that this statute has been administered in a manner which denied to appellant due process of law and equal protection of the laws. We believe

that the questions presented by this appeal are substantial and of the utmost public importance.

Respectfully submitted,

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No. [REDACTED]

Office-Supreme Court, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

B. ELTON COX,

Appellant,

against

STATE OF LOUISIANA,

Appellee.

ON 'APPEAL FROM THE SUPREME COURT OF LOUISIANA

APPENDIX TO JURISDICTIONAL STATEMENT

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Statutes Involved

LOUISIANA STATUTES ANNOTATED—R. S. 14.401

“§401. DEMONSTRATIONS IN OR NEAR BUILDING HOUSING A COURT OR OCCUPIED AS RESIDENCE BY JUDGE, JUROR, WITNESS OR COURT OFFICER

“Whoever, with the intent of interfering with, obstructing or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any soundtruck or similar device or resorts to any other demonstration in or near such building or residence, shall be fined not more than five thousand dollars or imprisoned not more than one year, or both.

“Nothing in this section shall interfere with or prevent the exercise by any court of the State of Louisiana of its power to punish for contempt. Acts 1950, No. 177, §§ 1, 2.”

Opinion of District Court

DECISION

(545)

With regard to bill No. 42,201, that is where B. Elton Cox is charged that he:

(546)

“ . . . unlawfully violated the provisions of R. S. 14:401, in that he, with the intent of interfering with, obstructing, and impeding the administration of Justice, and with the intent of influencing a Judge, witnesses and Court Officers in the discharge of their duty, did picket, parade and engage in a demonstration in front of and near the East Baton Rouge Parish Courthouse, a building housing a Court of the State of Louisiana and occupied and used by such Judges, witnesses and Court Officers.”

Mr. Jones has filed into the record this map which shows that the group which Reverend Cox led to the west side of America Street could not have been more than 103 feet from the steps of the courthouse to where his group was congregated directly across the street. That would be 103 feet and the Court feels that that would qualify under the definition of being near. With regard to the evidence as to whether or not he was the leader of the said group, he was the one who dealt with the officers, he is the Field Secretary of the Congress of Racial Equality and the evidence, not only from his own testimony but from Ronnie Moore and others of his affiliation with CORE, leaves no doubt in this Court's mind that he was the leader of the group.

Opinion of District Court

across the street from the Courthouse. That is also accurately reflected in the films. The real question, though, in (547)

that statute is with regard to the intent. The bill charges "... in that he, with the intent of interfering with, obstructing, and impeding the administration of Justice, and with the intent of influencing a Judge" I asked many questions of the accused and others such as Ronnie Moore as to just what did they propose to accomplish by congregating on the other side of the Courthouse, on the street on the other side of the Courthouse, singing these songs and protesting the "illegal incarceration" of their fellow members in the East Baton Rouge Parish jail.

The defense is that they had no intent to influence anyone, that this is just mere freedom of speech, that this is their right to protest out against anything which they happen to think is a social wrong and a social injustice. Of course, even our Federal Government has recognized the danger of freedom of speech expressed in this manner and has made it a violation of Federal law to picket and parade and engage in a demonstration in front of or around a Federal Court. Our state statute, which was copied after the Federal statute, was enacted even before the Supreme Court issued its initial school integration decision. This statute was on our books in the year 1950, long before the school integration decision, and was copied after the Federal statute.

Now, what do people do when they come and parade in (548)

front of the Courthouse? I was not a witness to the demonstration myself personally, but I was present in the Court-

Opinion of District Court

house shortly before it occurred. I was present in this Courthouse when evidently the police had gotten notice that some demonstration was impending, and my reaction was to get away from it as fast as I could. If you asked me what I was afraid of, I can tell you best by saying that having lived here in the South all of my life and being present around a demonstration of some 1,500 colored people who are protesting against racial discrimination and being a part of this community and living in this community where I know that especially of late that there is tension between the races, I felt that it would be unpleasant in some way or it would be some unpleasant thing to me to see; and because I know that there is tension between the races, I think I felt apprehensive that trouble or violence could erupt from such a situation. That is what I felt in my heart and that is why I left, because I didn't want to be anywhere near or in connection with it. I can say that it had influence on me. I can say that it made me fearful. Perhaps a better word would be "apprehensive," that there might be some racial violence. I can say as a judge that that is the way I felt. With all my heart I can say that. Then when I try to think of, if you want to protest, why protest around the Courthouse, I get the feeling that there is some subtle intimidation of me or of anyone of us who is responsible for upholding the laws of the State (549)

of Louisiana and maintaining, according to certain of our laws, segregation.

For example, Mr. Jones, who has practiced law in my court for some time with success, sometimes without, well

Opinion of District Court

knows that Division "B" and every other division up here has been segregated. He well knows that, and I think he also knows, too, that if I would just say to everybody white and colored, "Let's just all mix up together in the courtroom at the same time," I think that it would be calculated to cause disorder in court. Maybe some time that situation might not be, but he ought to know and I do know right now that it would cause disorder. When he makes such a statement in the presence of a courtroom almost entirely filled with colored persons and knowing the situation as he does, I think this is some intimidation of me. The Court gave half the section that was usually reserved for whites to the colored spectators in addition to the half that they have always customarily had, and he intimates that the Court is being unfair by allowing this trial to go on in a segregated courtroom. Yes, I feel that there is some intimidation of me, especially when there are some 250 colored people standing in the halls outside waiting to get in and overcrowd this courtroom when there is no place for them to sit if I gave them the whole courtroom.

In any event, I felt as a judge the subtle intimidation, (550)

and while I know that he protests bitterly against it as merely a freedom of his speech, I am sure when our Federal Government devised this statute which our state has copied that perhaps the Communists must have felt the same way.

Therefore, the Court finds the defendant B. Elton Cox guilty of bill No. 42,201.

. . .

(1) **Opinion of Louisiana Supreme Court**
SUPREME COURT OF LOUISIANA

No. 46,618

STATE OF LOUISIANA

v.

B. ELTON COX

APPEAL FROM DIVISION "A" OF THE NINETEENTH
JUDICIAL DISTRICT COURT

HON. FRED A. BLANCHE, JR., JUDGE

FOURNET, Chief Justice.

This case was previously before us on an appeal taken by the defendant, B. Elton Cox, but the bills reserved during his trial were not then considered inasmuch as the only question presented for determination was the legality of the sentence imposed. Finding he had been sentenced within twenty-four hours after his conviction, contrary to the provisions of R. S. 15:521, the sentence was annulled and set aside, the defendant ordered released on bail until such time as legal sentence was imposed, and, in the meanwhile, he was afforded the opportunity to take any pro-

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cedural steps to which he was entitled during the delay provided by that statute. See, *State v. Cox*, 243 La. 917, 148 So. 2d 600.¹

(2)

This appeal is from the defendant's conviction of violating Section 14:401 of the Revised Statutes of 1950² and his sentence thereunder to "pay a fine of \$5,000 and to be confined in the parish jail for one year, or in default of the payment of said fine to be imprisoned one year additional, this sentence to run consecutively with" the sentences that day imposed under two other convictions that were affirmed by this court in a decision handed down June 28, 1963. *State v. Cox*, — La. —, 156 So. 2d 448. The defendant in this case, as in the companion case, is relying for the reversal of his conviction and sentence on five Bills of Exceptions reserved and perfected during the trial, although in

¹ For the same reason the sentences originally imposed following his conviction under two other statutes were set aside on writs granted to review this action by the trial judge. See, *State ex rel. Cox v. Clennons*, 243 La. 264, 142 So. 2d 794.

² R. S. 14:401 is in that section of our criminal code dealing with "Offenses Affecting Law Enforcement." Its pertinent portion provides: Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the State of Louisiana, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more than five thousand dollars or imprisoned not more than one year, or both."

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the record they are not numbered and considered in the order in which they were reserved.*

These three charges, as well as a charge of criminal conspiracy under R. S. 14:26 of which this defendant was exonerated by the trial judge, grew out of the same incident and were, by agreement, consolidated for trial, the evidence adduced at that time being made applicable to all. The basic attack on the legality of the conviction is, in essence, identical in all three cases, the only material difference being the facts and contentions specifically applicable to the charges under the statute involved in each.

(3)

In considering these companion cases we found it difficult, as we do here, to answer the arguments of defense counsel without a great deal of duplication and repetition, particularly since the last two bills include the contentions raised in the first three with the usual additional assertion there is no evidence to support the conviction; hence, in order to avoid such repetition and duplication, we adopt the four basic causes assigned by the accused for the reversal of his conviction and sentence as succinctly stated in the opinion in *State v. Cox*, — La. —, 156 So. 2d 448:

“First, it is asserted that the specific laws under which he was charged, tried and convicted . . . are

* The 1st was reserved when the trial judge overruled the motion to quash the information; the 2nd when he ruled the state's answer to a request for a Bill of Particulars was adequate; the 3rd is levelled at a purported failure to secure an impartial trial because of the segregated character of the courtroom; and the 4th and 5th, respectively, when the judge overruled motions for a new trial and in arrest of judgment.

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unconstitutional in their application; for the conviction thereunder infringes upon the defendant's right of free speech protected by the First Amendment of the United States Constitution which the States cannot deny its citizens because of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

"Second, the claim is made that these laws and the bills of information are too vague and general and hence violate the due process and equal protection clauses of the Fourteenth Amendment.

"Third, it is contended that Cox's trial and conviction were violative of the Fourteenth Amendment for there was no evidence tending to prove the crime charged.

"Fourth, it is contended that the segregated conditions in the courtroom during the trial denied Cox a fair trial in violation of the Sixth and Fourteenth Amendments."

The argument by defense counsel in the case at bar is also almost identical with that presented in the companion cases, both orally and in brief, and, like the Bills of Exceptions, are not only lengthy and repetitious, but, when properly analyzed, as we found in these cases (Nos. 46,395 and 46,396 on the docket of this court), basically unsound in that they are without foundation in fact or in law.

Defendant's first contention is that R. S. 14:401—prohibiting any form of demonstration in or near a building housing a court of the State of Louisiana, or in or near a

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(4)

building or residence occupied or used by a judge, juror, witness, or court officer, with the intent of interfering with the administration of justice, or with the intent of influencing such judge, juror, witness, or court officer in the proper discharge of his duties, under which statute the defendant was convicted—is unconstitutional in its application in this case.

While defense counsel concede that interfering with the administration of justice is illegal, as is also the influencing of a judge, juror, witness, or court officer in the proper discharge of his duties, it is contended that if the statute is construed to convict him for demonstrating with his followers in front of the East Baton Rouge Parish courthouse, it is unconstitutional in that it deprives him of his right to peacefully assemble and speak freely, as guaranteed by the First Amendment to the Constitution of the United States; further, that in denying him these rights, it also violates the equal protection and due process clauses of the Fourteenth Amendment to the federal constitution.

In considering similar contentions urged in the two companion cases, we recognized, as did the court below, that under decisions of the Supreme Court of the United States the freedoms guaranteed individuals under the First Amendment are protected by the Fourteenth Amendment from invasion by the states, citing a number of authorities whereby this country's highest court established this rule in the jurisprudence. But we also pointed out that the United States Supreme Court has recognized that the right of freedom of speech and of the press is not absolute, and

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held that a state may, by general and non-discriminatory legislation, regulate the exercise of that freedom under its police power. *Cantwell v. Connecticut*, 310 U. S. 296, 60 Sup. Ct. 900, 84 L. Ed. 1213.

Unquestionably these rights, freedoms, or privileges of peaceful assembly and of expression and discussion—however they may be considered—as well as the impartial administration of justice that is guaranteed under the Sixth Amendment to the Constitution of the United States, are all vital and important to the concepts on which this nation was founded. To paraphrase Mr. Justice Frankfurter in (5)

his concurring opinion in *Pennekamp v. Florida*, the claims with which we are faced are not those of right and wrong, but of two rights, each highly important to the well-being of society, the core of the problem being to arrive at a proper balance between basic conditions of our constitutional republic—freedom of utterance and peaceful assembly on the one hand, and the proper and impartial administration of justice on the other, and since the latter is one of the chief tests of the true concepts of our constitutional government, it should not be made unduly difficult by irresponsible actions.

In his excellent dissertation on the subject matter, which we adopt as based on sound reasoning and unassailable logic, Justice Frankfurter continues: "Without a free press there can be no free society. Freedom of the press, however, is not an end in itself but a means to the end of a free society. *The scope and nature of the constitutional protection of freedom of speech must be viewed in that light*

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and in that light applied. The independence of the judiciary is no less a means to the end of a free society, and the proper functioning of an independent judiciary puts the freedom of the press in its proper perspective. *For the judiciary cannot function properly if what the press does is reasonably calculated to disturb the judicial judgment in its duty and capacity to act solely on the basis of what is before the court.* A judiciary is not independent unless courts of justice are enabled to administer law *by absence of pressure without*, whether exerted through the blandishments of reward *or the menace of disfavor.* * * * A free press is not preferred to an independent judiciary, nor an independent judiciary to a free press. *Neither has primacy over the other;* both are indispensable to a free society. The freedom of the press in itself presupposes an independent judiciary through which that freedom (whether of utterance, expression, speech, or peaceful assembly) may, if necessary, be vindicated. And one of the potent means for assuring judges their independence is a free press." *Pennekamp v. Florida*, 66 Sup. Ct. 1029, 328 U. S. 331, 90 L. Ed. 1295. (The emphasis and language within brackets has been supplied.)

(6)

We think it proper to mention here and now that R. S. 14:401 was not, as contended by defense counsel and urged in two of the bills reserved (to the denial of a motion for a new trial and one in arrest of judgment), adopted by the Louisiana legislature "for the specific purpose and intent to implement and further the state's policy of enforced segregation of races." Instead, it was almost a duplicate of an act introduced in Congress in 1949 (Senate Bill No.

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1681 and House Bill No. 3766) condemning picketing, parading, and demonstrations in the environs of federal courts, and passed in 1950 with the full support and approval of the American Bar Association for the reason that such conduct in the immediate vicinity of a building or residence housing a court or court officer was anathema to our concepts of justice according to law. The only difference in the federal statute (18 USCA 1507) and our Act No. 177 of 1950 (now R. S. 14:401), as reflected by the wording of our statute as set out in Footnote No. 2, is that in place of the words "in or near a building housing a court of the United States," our legislature substituted the words "in or near a building housing a court of the State of Louisiana."

The legislative history of the federal act on which ours was patterned discloses it was passed because of picketing conducted by large crowds outside of a federal district court building in Los Angeles, but, primarily, as the result of the disgraceful picketing and demonstrations in, around, and near a federal building in New York housing, among other courts, the one in which Judge Harold R. Medina was—for a period in excess of 9 months in 1949—endeavoring to conduct with some semblance of order the trial of 10 of the top leaders of the communist party in the United States, despite the attempt of followers of this philosophy to turn the trial into a travesty of justice by insults, jeers, and harassments through printed signs, calls, loudspeakers, and other methods of persecution heaped upon Judge Medina and court officers in an effort to intimidate the Judge in particular in the proper and impartial trial of that case. *It is significant to note, however, that the statute in its*

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operation is not limited to any particular group or person. It applies alike to all. And although we can find no other
(7)

decision of any court in which the constitutionality of this and like statutes have, heretofore, been assailed, we now hold that R. S. 14:401 is constitutional and was legally enacted under the police power with which this state is endowed to insure the orderly and impartial administration of justice.

The contention that the statute itself, as well as the Bill of Information, are too vague and uncertain to inform the defendant of the nature of the charge against him, as required by Section 10 of Article I of the Constitution of Louisiana; R. S. 15:227; and the Sixth Amendment to the Constitution of the United States, is without merit. As shown above, the mischief sought to be denounced by the statute is as clear as the English language can make it, and since, in drawing the Bill of Information, the district attorney not only tracked the language of the statute itself, but gave such additional facts and circumstances as were necessary to inform the defendant of the nature of the charge against him and also furnish the basis for a plea of former jeopardy, or autrefois acquit, in the event another charge covering this same incident was ever returned against him, it fully complies with all pertinent constitutional and statutory requirements. The Fifth Amendment to the Constitution of the United States; Section 9 of Article I of the Constitution of Louisiana; R. S. 15:274-283; *State v. Straughan*, 229 La. 1036, 87 So. 2d 523; *State v. Scheler*, 243 La. 443, 144 So. 2d 389, and the authorities therein cited.

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Any additional information thought necessary for the defense of Cox was available to counsel through the means of a Bill of Particulars. However, in resorting to this by motion, counsel only requested that the state advise "whether or not the defendant, in any manner, threatened or intimidated any Judge, witness and/or Court Officer in the discharge of their respective duties, and, if so, give the names and addresses of the Judges, witnesses and/or Court Officers allegedly so threatened or intimidated. Also, state how, when and where the threats and intimidations were made, if any." The second bill was reserved when the trial judge maintained the assertion of the district attorney in his answer that this information was neither relevant nor material for the trial of defendant's case, and in this court. (8)

counsel has not shown either orally or in brief (1) in what respect the lower court erred by such ruling, (2) that this information was necessary or relevant under the statute, or (3) that such information was necessary for his defense.

The statute does not make threats or intimidations ingredients or elements of the mischief sought to be prohibited. The sole object is, as previously stated, to make the courts secure from undue interference or harassment by parades, picketing, and demonstrations in or near a building where courts in which the due administration of justice is dispensed are housed, or in or near the residence of officers of such courts.

The contention that there was no evidence tending to prove the criminal charge against the defendant also lacks substance. The jurisdiction of this court in criminal matters

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is limited to questions of law alone under Section 10 of Article VII of the Constitution of Louisiana. And although there are decisions of this court recognizing that where there is no evidence at all to support the establishment of an essential element of the crime charged a question of law that we may review is presented (*State v. Di Vincenti*, 232 La. 13, 93 So. 2d 676; *State v. La Borde*, 234 La. 28, 99 So. 2d 11; and *State v. Bueche*, 243 La. 160, 142 So. 2d 381, as well as the authorities therein cited), where there is some evidence to sustain the conviction the sufficiency thereof is a matter that lies within the exclusive province of the trial judge and/or jury, and is not reviewable by this court. *State v. Brazzel*, 229 La. 1091, 37 So. 2d 609; *State v. Domino*, 234 La. 950, 102 So. 2d 227; and *State v. Copling*, 242 La. 199, 135 So. 2d 271, as well as the authorities therein cited.

In our opinion there is ample evidence to sustain the conviction in this case. The record of the testimony (made a part in its entirety by defense motions for a new trial and in arrest of judgment) discloses that according to the estimate of Cox himself between 1,500 and 3,800 colored people congregated in mass formation a couple of blocks (9)

from the courthouse on December 15, 1961. This was not only the largest mass grouping of any people in that or the downtown Baton Rouge area within the memory of any of the witnesses, but was composed largely of students from Southern University, a state university for colored people located a few miles north of Baton Rouge, that had absented themselves from school on that day in order to par-

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ticipate in this demonstration. All were admittedly well trained and indoctrinated and subject to any desired activity required by Cox by so simple a signal as "the snapping of his fingers.

This large mass of demonstrators was met by local law enforcement officers, and, when questioned, Cox informed them they were preparing to move on the courthouse in protest against the incarceration (on the fourth floor of that building) of some 23 colored people who had been "illegally" arrested the day previous; whereupon Cox was informed this would avail him and his followers nothing, the proper remedy being to resort to the courts since only there could it be decided whether these people had, indeed, been "illegally" arrested.⁴ And despite the fact Cox told the officers he and the demonstrators were going to the courthouse anyway and would there *peacefully* for a few minutes by singing a hymn and patriotic song, praying, and pledging allegiance to the flag, upon arrival across the street from the front of the courthouse, and at a signal from Cox, and demonstrators immediately pulled from beneath their coats theretofore hidden placards and signs with shouts and yells that interspersed the singing and other parts of the purported "program," with the result that, in return, those in the jail answered by yelling, screaming, singing, and banging on the walls and doors of the cells in which they were lodged on that side of the building. Cox added to the situation that had by then reached a high pitch

⁴ It does not appear from the record that any attempt whatsoever had been made to secure the release of these 23 persons on bail, or by resort to the available writ of habeas corpus.

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of emotional tension by making an "inflammatory" speech, causing some of the officers to feel this now disorderly and seething mob intended to storm the courthouse and liberate the 23 people there incarcerated, and that a riot was inevitable.

(10)

The Sheriff, sensing the seriousness of this explosive situation, by means of a loudspeaker ordered the demonstrators to move on. However, Cox, and on his instruction the group, openly defied this command and continued the "fiery" and "frenzied" demonstration, in which they were still being joined by the 23 people incarcerated in the building, despite a second admonition by the Sheriff. It was only by the use of tear gas that the Sheriff, his deputies, and other law enforcement officers (about 80 in all) were able to disperse the group. The trial judge who presided over these proceedings against Cox—and who, with one or more of the other three judges having chambers in this building in which they had been holding court since early in September, would eventually be required to determine in a proper trial whether the incarcerated people had been "illegally" arrested—stated in his reasons for judgment that he was so "fearful" and "apprehensive" of the outcome of this demonstration by such a large mass of people in the area of the courthouse he was, in fact, intimidated, and, upon learning the demonstration was imminent, closed his office and left the building.

These facts belie defense argument that by his conviction Cox and his followers were denied the right to "peacefully" assemble as guaranteed by the First and Fourteenth Amendments to the federal constitution.

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Moreover, while the courts have recognized that picketing is an exercise of a form of free speech that is protected by these constitutional shields, this sweeping analogy as first enunciated by the United States Supreme Court in the case of *Thornhill v. State of Alabama*, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093, has since been greatly refined and restricted. For example, this high court in *Hughes v. Superior Court of State of California*, 339 U. S. 460, 70 S. Ct. 718, 721, 94 L. Ed. 985, pointed out that " * * * while picketing is a mode of communication it is inseparably something more and different * * * 'since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated.' (11)

" * * * the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. * * * It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance. * * * 'a state is not required to tolerate in all places and all circumstances even peaceful picketing * * *.' " In addition, mass picketing is not only reprobated—particularly where it interferes with and hampers others in the orderly discharge of their duties and their right to be where they are in connection with them—but picketing that is not peaceful is prohibited. See the annotation on this subject in 32 ALR 2d 1026, particu-

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larly the section No. 6 on page 1036, as well as the supplements thereto. (The emphasis has been supplied.)

From the foregoing it is manifest that the view of the incident as now contended by Cox bears no relation whatever to the established facts disclosing that between 1,500 and 3,800 people marched "en masse" against the halls of justice and acted near such halls in a manner calculated to interfere with the orderly administration of justice. As stated in our decision in the companion cases, "These demonstrators, like other citizens, must confine their exercise of constitutional freedom within lawfully regulated limits of those freedoms." Or, as Judge Learned Hand put it in upholding the conviction of the 10 communist leaders tried before Judge Medina, "Nobody doubts that when the leader of a mob already ripe for riot gives the word to start, his utterance is not protected by the Amendment." See, *United States v. Dennis*, 183 F. 2d 201.

The final error complained of in this case—that the spectators in the courtroom in which Cox was tried were segregated, thus denying him a fair trial in violation of the Sixth Amendment to the federal constitution, and the equal protection and due process clauses of the Fourteenth—was adjudicated adversely to the defendant in our decision in the companion cases.

Counsel do not claim that Cox did not receive a fair and
(12)

impartial trial in accordance with the accepted rules and regulations fixed for the orderly trial of cases in the courts of this state, as required by our constitution and statutes, or point out in what manner he was prejudiced by the separation of the spectators in the courtroom where he was tried.

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Instead, it is contended that the constitutional rights of "these spectators" were violated during the process of his trial, and it is his right to assert the denial of the rights of these people thus purportedly occurring.

One need only review the record in this case to readily discern the defendant received a fair and impartial trial, being given every consideration and protection afforded all persons accused of crimes under our constitutional and laws by a judge who acted throughout with great patience and forbearance in an effort to maintain a reasonable semblance of order in the courtroom during the trial, as well as to accommodate the colored spectators, even authorizing the use by them of all seats not then occupied by the white people. Finally, on the third day of the trial, he went so far as to have an officer of the court count the number of seats still vacant and then go into the corridors outside the courtroom and inform those congregated there of their availability. Nevertheless, the trial continued with many still remaining vacant.

To hold, as contended by Cox, that his conviction is a nullity merely because of the segregated condition of the courtroom, would, of necessity, make every conviction of an accused during the past years in all of the courts of the state, and regardless of race, nullities, with the result that everyone now confined in our penal institutions would be entitled to have his conviction set aside, and these thousands of criminals would then be turned loose on the people of the state.

For the reasons assigned, the conviction and sentence are affirmed.

(22)

Notice of Motion to Quash

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

AND NOW into this Honorable Court, through his undersigned counsels, comes B. Elton Cox, the defendant in the above entitled and numbered cause, moves to quash the Bill of Information for the following reasons, to-wit:

1.

That the defendant alleges and avers that he did on December 15, 1961, in protest of racial segregation, engage in a demonstration by assembling on the West side of St. Louis Street, across the street from the Courthouse Building of East Baton Rouge Parish, State of Louisiana, but denies that he engaged in any activity whatsoever with the intent of violating LSA-R. S. 14:401 as charged in the Bill of Information.

(23)

2.

That LSA-R. S. 14:401 is sufficiently vague and indefinite to be unconstitutional on its face, in that, it does not prescribe the distance or a limit from the Courthouse Building where the defendant or any other citizen of the United States of America can lawfully assemble in exercise of the rights accorded the defendant, or any other citizen of the United States of America, by the First Amendment to the Constitution of the United States of America.

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3.

That LSA-R. S. 14:401 is so vague and indefinite in its construction so as to deprive defendant of his rights, privileges, immunities and/or liberties without due process of law and denies him the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

4.

That the said Bill of Information does not allege any unlawful act or acts committed by the defendant, except violating the rights of freedom of speech, press, assembly and petition accorded the defendant, a citizen of the United States, by the First Amendment to the Constitution of the United States of America.

5.

That while the arrest and charge were for demonstrating with the intent to interfere with, obstruct and impede the administration of justice, and with the intent of influencing a Judge, witnesses and Court Officers, in the discharge of their duties, there was no such activity or activities, except the activity or activities in which the defendant engaged to protest racial segregation, and that the use of the criminal process in such a situation denies and deprives the defendant, a citizen of the United States, of his rights, privileges immunities and liberties guaranteed defendant by the Fourteenth Amendment to the Constitution of the United States of America.

(24)

6.

That if said Statute LSA-R. S. 14:401, as amended, does embrace within its terms and meanings, that defendant, by

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engaging in a demonstration in protest of racial segregation interferes with, obstructs, impedes the administration of justice, and influences Judges, witnesses and Court officers in the discharge of their duties, then and in that event said Statute, LSA-R. S. 14:401, is unconstitutional in that it deprives your defendant of his rights, privileges, immunities and/or liberties without due process of law and denies him the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

7.

That the Bill of Information is insufficient to charge an offense or crime under LSA-R. S. 14:401, except violating the rights, privileges, immunities and liberties accorded and guaranteed the defendant, a citizen of the United States, by and under the First and Fourteenth Amendments to the Constitution of the United States of America.

WHEREFORE, your defendant, B. Elton Cox, prays that this Motion to Quash be maintained and that the said Bill of Information as to him, and as far as he is concerned be declared null and void and that he be discharged therefrom.

Attorneys for Defendant:

JOHNNIE A. JONES

ROBERT F. COLLINS

NILS R. DOUGLAS

LOUIS E. ELIE

2211 Dryades Street

New Orleans 13, Louisiana

/s/ By: Johnnie A. Jones

Opinion on Motion to Quash

(26)

That on a subsequent day of Court a hearing was had contradictorily with the state on said motion to Quash and that the court overruled and denied the said motion to Quash to which your defendant then and there objected and reserved a bill of exceptions to the information, the motion to Quash, the States answer to the motion to Quash and to the Courts ruling denying the said Motion to Quash, and now your defendant perfects this formal bill of exceptions making a part of same the said information, the motion to Quash, the States answer to the motion to Quash, any evidence offered or testimony heard on the motion to Quash, the Courts ruling on same, and the entire record in these proceedings, and first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the court

and prays that the same be signed and sealed by the judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 31st day of January 1963.

(Signed) Fred A. Blanche, Jr.

JUDGE

Notice of Motion in Arrest of Judgment

(13)

Now into Court, after verdict against B. Elton Cox, and before sentence comes the said B. Elton Cox, through undersigned counsel, and moves the Court here to Arrest Judgment herein and not to pronounce the same because of manifest errors in the record appearing to-wit:

1.

That at the beginning of the trial (Transcript Page 4) attorney Johnny Jones moved for the record to show that Murphy Bell, Attorney, was associated on the case with him. That the court ordered a minute entry to that effect. That Attorney Jones also asked for the same record to show that the courtroom was segregated to which request the District Attorney objected and to which the court replied:

"Also let the record show that it has been the practice and custom in the East Baton Rouge Parish Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white and let the record especially show that the

(14)

judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people". (italics ours)

That on Wednesday, January 31, 1962 (transcript page 278) Johnny Jones renewed his objection to the segregated courtroom, in the following words:

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"Your Honor, I want to renew our objection about court being segregated and I want to reserve a formal bill".

To which the court replied:

"Well, I just don't think it makes any difference I don't know if he has got any right to a bill on it or not, but I will let him perfect on it, if he wants to".

Then after some discourse between Mr. Pitcher and Mr. Jones the court said:

"Let it stand as it is".

The above statements are held by counsel to constitute a correct reserving of an objection and reserving of a Bill of Exceptions to the overruling of the Motion to Desegregate the Courtroom. If not so deemed, then it is our alternative position that the remarks of the court constitutes a part of the record which may properly be presented in review for error in a Motion in Arrest of Judgment.

Thus the record shows on its face that defendant was deprived of rights guaranteed him under the equal protection of the laws and due process of law clauses of the Fourteenth Amendment to the Constitution of the United States.

2.

That the Bills of Information are insufficient to charge a crime under L. S. A.-R. S. 14:401.

(15)

3.

That the convictions of defendant for violation of L. S. A.-R. S. 14:401 denied defendant rights guaranteed to

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him under the first amendment to the Constitution of the United States.

4.

That the convictions of defendant for violation of L. S. A.-R. S. 14:401 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

5.

That the statute under which the defendant was convicted is unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that it was enacted for the specific purpose and intent to implement and further the state's policy of enforced segregation of races.

6.

That the statute under which the defendant was convicted is unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that they were arbitrarily, capriciously and discriminately enforced against persons peacefully exercising their rights of freedom of speech in protest against racial segregation.

7.

That the statute under which defendant is convicted and the Bill of Information filed thereunder is unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statute could not constitutionally be con-

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strued to cover the activities sought to be punished by the Louisiana Courts.

8.

That the judgment is contrary to the law and the evidence in that there is no evidence to support a finding of guilt under said statute thus violating defendant's rights (16)

under the Due Process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America.

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause, if any he has, why a Motion in Arrest of Judgment should not be granted in these proceedings.

ROBERT F. COLLINS

NILS R. DOUGLAS

LOUIS E. ELIE

2211 Dryades Street

New Orleans 13, Louisiana

(Signed) By: Nils R. Douglas

MURPHY W. BELL

971 South 13th Street

Baton Rouge, Louisiana

Of Counsel:

CARL RACHLIN, Esq.

280 Broadway

New York, New York

Opinion on Motion in Arrest of Judgment

(37)

The Court, after due consideration of the Motion in Arrest of Judgment filed and submitted by counsel for accused, denied and overruled same. To which ruling of the Court, counsel for accused excepted and reserved a formal bill of exceptions, making a part of the bill, the entire record of these proceedings and the motion filed. Defendant first submitting this his bill of exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 31st day of January 1963.

(Signed) Fred A. Blanche, Jr.
JUDGE

Notice of Motion for New Trial

(18).

Now INTO COURT, through undersigned counsel comes B. Elton Cox, the defendant in the above entitled and numbered cause and moves the court that the verdict rendered herein be set aside and a New Trial ordered, for the following reasons:

—1—

That the Bill of Information is insufficient to charge a crime under L. S. A.-R. S. 14:401.

—2—

That the conviction of defendant for violation of L. S. A.-R. S. 14:401 denied defendant rights guaranteed to him under the First amendment to the Constitution of the United States.

—3—

That the conviction of defendant for violation of L. S. A.-R. S. 14:401 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

—4—

That the courts overruling of defendant's objection to the segregated seating in the courtroom to which ruling defendant reserved a formal bill of Exceptions was error and prejudicial to the defendant in that it denied him the right to a fair trial guaranteed to him by Article I Section 6 of the Constitution of the State of Louisiana. Said error further denied defendant the equal protection of the laws and due process of law guaranteed to him by the First Section

Notice of Motion for New Trial

(19)

of the Fourteenth Amendment to the Constitution of the United States.

—5—

That the statute under which the defendant was convicted is unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that it was enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

—6—

That the statute under which the defendant was convicted is unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that it was arbitrarily, capriciously and discriminately enforced against persons peacefully, exercising their rights of freedom of speech in protest against racial segregation.

—7—

That the statute under which defendant is convicted and the Bill of Information filed thereunder are unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statute could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

—8—

That the judgment is contrary to the law and the evidence in that there is no evidence to support a finding of guilt

Notice of Motion for New Trial

under said statute thus violating defendant's rights under the Due Process Clause of the Fourteenth Amendment.

—9—

That the Court erred to the prejudice of the accused by denying the Motion to Quash.

—10—

That the Court erred to the prejudice of the accused by denying the Application for a Bill of Particulars.

(20)

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause; if any he has, why a New Trial should not be granted in these proceedings.

ROBERT F. COLLINS

NILS R. DOUGLAS

LOUIS R. ELIE

(Signed) By: Nils R. Douglas
MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

Of Counsel:

CARL RACHLIN
New York, New York

Notice of Motion for New Trial

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:

NILS R. DOUGLAS

who after first being duly sworn did depose and say that he is the attorney in the above matter and all the allegations herein contained are true and correct:

(Signed) Nils R. Douglas
NILS R. DOUGLAS

**SWORN TO AND SUBSCRIBED
BEFORE ME THIS 29 DAY
OF JANUARY, 1963.**

(Signed) **Murphy W. Bell**
NOTARY PUBLIC

(31)

Opinion on Motion for New Trial

The Court, after hearing the said Motion of the defendant for a New Trial, denied and overruled the same, and to such action of the court, counsel for the defendant then and there objected and reserved a formal bill of exceptions and counsel now perfects this his formal bill of exceptions to the overruling of the Motion for a New Trial and makes a part hereof the bill of information, the motion to quash, the Courts ruling overruling the motion to quash and any evidence offered or testimony heard on the trial of the case on the merits, the motion for a New Trial, the courts ruling on the motion for a New Trial and the entire record in these proceedings, and first submitting this his bill of exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 31st day of January 1963.

(Signed) Fred A. Blanche, Jr.
JUDGE

(4)

Excerpts From Transcript of Trial

Mr. Jones: Your Honor, I would like to move to associate attorney Murphy Bell on the case with me.

The Court: All right.

Mr. Jones: I would like for the record to show that he is now being associated on the case.

The Court: Show a minute entry to that effect.

Mr. Pitcher: No objection.

Mr. Jones: I would also like for the record to show that

(5)

this case is one where the defendant is being charged for the protest of racial segregation and that within the Court-house itself that the defendant is being tried in that racial segregation is being practiced and that there are interested parties, citizens on the outside of court waiting—

Mr. Pitcher: I object to the remarks of counsel—

Mr. Jones: —who are interested in the case and that there are seats vacant in the court which are being reserved for the whites and that the Negro citizens who are interested in the case and the outcome of the case are not permitted to utilize these seats. I would like for that to be made a part of the record.

The Court: Also, let the record show that it has been the practice and custom in the East Baton Rouge Parish

(6)

Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white, and let the record especially show that the judge in this case ordered that half of the seats that were formerly reserved

Excerpts From Transcript of Trial

and available for white people are now being occupied and filled by colored people.

Mr. Pitcher: If Your Honor Please, while Your Honor is well aware of what is going on, I am sure that the Supreme Court of the United States will not be, and for that reason, I ask that Your Honor appoint a Deputy Sheriff to personally count the number of people in this room to be able to testify as to the number of people present in (7)

court and the seats available and the number of white people present. I think the State is entitled to that.

The Court: All right.

(A Deputy Sheriff was so appointed by the Court at this time and ordered to count the people in the courtroom while the proceedings were going on.)

Mr. Jones: If the count is to be made, Your Honor, we would also like to make a count of those who are waiting on the outside.

The Court: Count them, too.

Mr. Jones: And count the number of seats that are still available.

The Court: All right.

Excerpts From Transcript of Trial

(340)

Testimony of Thomas Terrell Edwards, Captain in Charge of Jail, and Herman Thompson*By the Court:*

Q. In response to a request of the Court did you count the number of colored people sitting in the courtroom at the time court opened on, what day was that—Monday?
A. Day before yesterday.

Mr. Jones: Monday, the twenty-ninth.

Q. Did you do that? A. Yes, sir, I did.

Q. And how many people were sitting in here? A. There was 127 colored and 8 whites in the courtroom behind the rail.

Q. Behind the rail. A. At the first count I made. Now, I made two, If Your Honor remembers. The second count there was the same number of colored, 127, and there were 14 whites.

Q. How much later was that? A. Oh, about two hours, if I recall correctly.

Q. When court opened there were 127 colored and 8
(341)
whites, is that correct? A. Yes, sir.

Q. And approximately how many seats were reserved by the Court for whites? A. Forty-two.

Q. How many colored were on the outside? A. Eighty-eight.

Q. Eighty-eight? A. Yes, sir.

Excerpts From Transcript of Trial

By Mr. Jones:

Q. Would they be waiting to get in, sir? A. None of them indicated that they wanted to get in. They were standing in the hall is all I could tell.

By the Court:

Q. Was that at the same time, because it looked like to me that there were more than eighty-eight. A. At the time I counted, sir, there were just eighty-eight. Now, I was told—

Q. How much later was that than when I first told you—when we opened Court, how much longer after that did you go out and count? A. Well, I made the second count in the courtroom and then I went outside and made a count, and I believe it was approximately two hours between the two counts. I am guessing at that time. At the time I really don't recall, sir.

(342)

Q. At the time that the court was opened, wasn't there more out there in the hall than there were at the time you took the count? A. I don't know, sir.

Q. I was told there were. A. I was told that at several times in the afternoon there 200 or 250, but I didn't see them. I didn't go out there.

Q. Do you know anyone who could make an estimate to that effect among the officers? A. Captain Henderson or Captain Thompson could.

The Court: All right, is that all?

*Excerpts From Transcript of Trial**By Mr. Jones:*

Q. Did you reserve any seats in the courtroom for the white people? A. I didn't reserve any seats for anyone.

Q. Was there any seats in the courtroom reserved for the whites then? A. No, sir, His Honor—

The Court: I will answer that from the bench. I reserved one-half of what was formerly the white
(349) section for white people and I gave the other half of it to the colored people.

WITNESS EXCUSED

The Court: Captain Thompson.

HERMAN A. THOMPSON, called as a witness by the Court, being first duly sworn, testified as follows:

Direct examination by the Court:

Q. How many colored people were out in the hall at the time court started on Monday? A. There were two hundred or better, Judge.

Q. Is that your estimate? A. Yes, sir, that was why we called the fire marshals.

Q. Could it have been as many as 250? A. It could very easily.

Q. Could it have been more than 250? A. They were solid from this courtroom door about four foot out from the door down to the Grand Jury room, and there were some of them sitting on benches down the hall.

Excerpts From Transcript of Trial

Q. Did you clear a corridor between them for a passage-
(344)

way to the door here? A. We were having difficulty. That is why we called the fire marshals in order to enforce the fire laws.

Q. How long did a crowd of that size remain outside?
A. I would say for at least two hours.

By Mr. Pitcher:

Q. Captain, at the time there were 250 people in the hall, was that the same time that Captain Edwards has said there were 127 in the courtroom? A. That is correct, sir.

Q. And there were only eight white people in it at that time? A. That is correct, sir.

Mr. Pitcher: That's all. Your witness.

A. (Directed to the Court) Do you want what you asked for yesterday?

By the Court:

Q. What is that? A. You asked how many vacant seats there were.

Q. What time was it? A. At 11:15 A. M. yesterday you asked me and there were twenty vacant seats and only five waiting outside, and out of the five we asked—one was Reverend Johnson and he said he didn't care to come in.

MAR 17 1964

N [REDACTED]

24

JOHN E. DAVIS, CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1963

B. ELTON COX,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Appeal From The Supreme Court of Louisiana

**MOTION TO AFFIRM AND/OR DISMISS ON
BEHALF OF THE STATE OF LOUISIANA,
APPELLEE**

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No. 735

**In the
Supreme Court of the United States**

OCTOBER TERM, 1963

B. ELTON COX,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Appeal From The Supreme Court of Louisiana

**MOTION TO AFFIRM AND/OR DISMISS ON
BEHALF OF THE STATE OF LOUISIANA,
APPELLEE**

STATEMENT

The findings of fact in this case, as contained in the opinion of the Supreme Court of Louisiana, and set forth at pages 14A through 17 A of the Appendix to Jurisdictional Statement, is supported by the transcript and without reiteration herein, said findings of fact are urged by Appellee as being a correct statement of the record, and ask that this Honorable Court accept same as such.

The Questions Presented Are Not Substantial

I. The alleged unconstitutionality of statutes.

Appellant contends that the demonstration in

the case at bar is a classic example of a peaceful assembly for the redress of grievances and, as such, it is within the protected area of free trade in ideas under the First Amendment. *Edwards v. S. Carolina*, 372 U.S. 229 (1963).

In *Edwards*, there were 187 demonstrators all of whom were arrested and convicted by the State court; there was no obstruction of pedestrian or vehicular traffic within the State House grounds. Also, in *Edwards*, the Supreme Court of South Carolina said that under the law of that State, the offense of breach of the peace "is not susceptible of exact definition."

In the case at bar, there were between fifteen hundred and thirty-eight hundred persons in this demonstration. Of that number, only one, appellant, was arrested and convicted in the State Court of Louisiana. In the case at bar, the marchers occupied the sidewalk across the street from the Courthouse, occupied the entire sidewalk for the greater portion of a block, in such a manner that no passage was possible thereon. All of the entrances to many offices facing that sidewalk were blocked; the occupants were unable to enter or leave. These demonstrators were "tightly packed" along most of the sidewalk. Also, these activities resulted in an obstruction of the street, which separates the sidewalk occupied by the marchers and the courthouse. Because of this, it was necessary to re-route traffic away from that street. Included in appellant's speech was also a protest against the al-

legedly illegal arrest of some of their members on the previous day. During this demonstration, the prisoners in the Jail, in response thereto, evoked loud and frenzied outbursts. "Grumbling" was heard among the white people who had gathered there. A feeling of "impending excitement" was apparent to all and a fear arose among those present that they were "about to have a riot." "Tension was running high." Some of the witnesses felt the demonstrators were about to storm the courthouse to get the prisoners who had been arrested the day before. The prisoners in jail were "hollering," "screaming," "beating on bars," "beating on walls and so on" trying to attract the attention of the demonstrators across the street.

The sheriff, feeling that a riot was eminent, and fearing that the crowd would get out of hand, knowing that the street and sidewalk, were blocked completely to vehicular and pedestrian traffic, instructed appellant, by means of a loudspeaker, to move on and break it up; that he had had his allotted time, to which Cox instructed the demonstrators, "Don't move." At this point, the police disbursed the crowd and appellant was arrested the following day.

It is readily ascertainable from a factual basis that *Edwards v. S. Carolina* has no application herein. As a matter of fact, in *Edwards*, this Court specifically found, at page 231:

"During this time a crowd of some 200 to 300 onlookers had collected in the horseshoe area and on the adjacent sidewalks. There was no evidence

to suggest that these onlookers were anything but curious, and no evidence at all of any threatening remarks, hostile gestures, or offensive language on the part of any member of the crowd. The City Manager testified that he recognized some of the onlookers, whom he did not identify, as 'possible trouble makers,' but his subsequent testimony made clear that nobody among the crowd actually caused or threatened any trouble. There was no obstruction of pedestrian or vehicular traffic within the State House grounds. No vehicle was prevented from entering or leaving the horseshoe area. . . . There were a number of bystanders on the public sidewalks adjacent to the State House grounds, but they all moved on when asked to do so, and there was no impediment of pedestrian traffic."

This Court found that the arrest, conviction and punishment of petitioner in *Edwards*, under the circumstances disclosed by that record, infringed upon constitutionally-protected rights of free speech, free assembly, and freed petitioner to apply for a rehearing of his grievances.

Appellee has no objection to the holding of *Edwards*, but contends that the circumstances in the case at bar do not lend itself to the applicability of the rule of law announced in *Edwards*. In *Edwards*, the Court found:

" . . . They peaceably assembled at the site of the State government and there peaceably expressed their grievances 'to the citizens of South Carolina, along with the Legislative Bodies of South Carolina'."

In *Edwards*, this Court found that the circumstances were not that of one of pushing, shoving and milling around, where threatened violence if the police did not act was present, or that the speaker passed the bounds of argument or persuasion and undertook the incitement of riot, or that this record was one of "fighting words." *Edwards v. S. Carolina*, 372 U.S. 336.

Further, in *Edwards*, this Honorable Court said, at page 236:

"We do not review in this case criminal convictions resulting from the evenhanded application of a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be limited or proscribed. If, for example, the petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public, this would be a different case."

This Court further stated, at page 237:

"... These petitioners were convicted of an offense so generalized as to be, in the words of the South Carolina Supreme Court, 'not susceptible of exact definition'."

In the case at bar, over fifteen hundred persons were demonstrating, and were lined along the sidewalks and streets along a one-block area directly adjacent to the Court House, where twenty-three demonstrators had been incarcerated in the Parish Jail, which is located on the top floor of the Court House.

Part of their demonstration was dedicated to the "illegal arrests" of these twenty-three demonstrators. During their demonstration, the street and sidewalk along the block were completely obstructed, preventing vehicular and pedestrian traffic. An emotional, loud response was also received by the demonstrators as a result of their actions from the twenty-three prisoners in the Parish Jail atop the Court House.

"The priceless character of First Amendment freedoms can not be gainsaid, but it does not follow that they are absolutes, immune from necessary State action, reasonably designed for the protection of society." *Edwards v. S. Carolina*, 372 U.S. 239.

"Where clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace or order, appears, the power of the State to prevent or punish is obvious." *Cantwell v. Connecticut*, 310 U.S. 308, 60 Sup. Ct. 905.

"Municipal authorities, as trustees of the public, have the duty to keep their community's streets open and available for movement of people and property, the primary purpose to which streets are dedicated. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may be lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stop-

page of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrians to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature or broadcasts in the streets. Prohibition of such conduct would not abridge the constitutional liberty, since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion." *Schneider v. State*, 308 U.S. 147, 160, 60 Sup. Ct. 146, 84 L.Ed. 155 (1939).

Freedom of speech does not give one the right to talk in any manner at any time, at any place, that he may choose. *Kovacs v. Cooper*, 336 U.S. 77, 69 Sup. Ct. 448, 93 L.Ed. 513 (1949). *Schneider v. State*, 308 U.S. 147, 60 Sup. Ct. 146, 84 L.Ed. 155.

Freedom of speech does not give one the right to say whatever he wishes. *Feiner v. New York*, 340 U.S. 315, 71 Sup. Ct. 303, 95 L.Ed. 267; *Cantwell v. Connecticut*, 310 U.S. 308, 60 Sup. Ct. 905.

It is respectfully submitted that this Court should not utilize the First Amendment to sanction the conduct of appellant in making a speech to over fifteen hundred people upon the public sidewalk and street adjacent to the Court House building in the City of Baton Rouge, completely obstructing same, and refusing to move and disburse when asked to do so, after being given some opportunity to make his speech. It is likewise respectfully submitted that this Court

should not utilize the first amendment and give protection to what appellant said with reference to protest against the "illegal arrest" of some of their members which was said to a crowd in excess of 1500 people adjacent to the court house where these members were incarcerated, and where all the court officials have their offices, including the Sheriff, the District Attorney and the Judges, as well as the courtrooms. Even Congress has considered such activity to be dangerous and a threat to the administration of impartial justice, and, in an effort to remedy such a situation, has passed legislation providing:

"Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court official in the discharge of his duty, pickets or parades in or near a building or residence occupied by such judge, juror, witness, or court officer, or with such intent uses any sound truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more than \$5000.00 or imprisoned for not more than one year, or both." 18 U.S.C.A., Section 1507.

Petitioner contends that *Edwards, Cantwell, Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 Sup. Ct. 776, 86 L.Ed 1031; *Terminiello v. Chicago*, 337 U.S. 1, 69 Sup. Ct. 894, 93 L.Ed. 1131; *Schneider, Thornhill v. Alabama*, 310 U.S. 88, 60 Sup. Ct. 736, 84 L.Ed. 1093, all sustain the holding of the State Supreme Court in this matter.

A reading of L.S.A.—R.S. 14:103.1 and L.S.A.—R.S. 14:100.1 will readily reveal that the words utilized in these statutes have a fixed, definite and commonly-understood meaning, and that they are narrowly and precisely drawn, so that a person of average intelligence would know what conduct is proscribed against. These statutes defining these offenses are not so generalized as to be "not susceptible of an exact definition" as the South Carolina Supreme Court found in *Edwards*. Rather, the State Supreme Court, herein, in dealing with this contention, found the statutes to be sufficient under the Fourteenth Amendment and under Section 10, Article 1, of the Louisiana State Constitution, which provides in effect that an accused shall be informed of the nature and cause of the accusation against him.

II. The Questions on Which the Decision of this Case Depends Are so Unsubstantial as not to Need Further Argument

A. Segregated Courtroom.

Based on the case of *Johnson v. Virginia*, 373 U. S. 61 (1963), appellant urges that because of a segregated condition in the courtroom that an urgent federal question, affecting the administration of justice as to him, is presented. In effect, he urges that the segregated condition in the courtroom would probably influence the trial judge in his deliberations in the cause. Recently, this contention was made in a petition for writs of certiorari to this Honorable Court, which were denied. See *Ronnie M. Moore, petitioner, v. State of*

Louisiana, respondent, October Term, 1963, No. _____ of this Court's Docket, unreported.

In the *Johnson* case, the objection to segregation was made by a Negro who had been arrested for contempt of court for sitting in seats assigned for white citizens, and the arrest and conviction was for that conduct. In the case at bar, there is no charge against this defendant for having violated any court-imposed seating arrangement and none of the parties upon whom the alleged segregation was imposed is before this Court in this case. Hence, the *Johnson* Case is no authority for the reversal of this conviction.

In LSA—R.S. 15:557, it is provided:

"No judgment shall be set aside, or a new trial granted by any appellant court of this state, in any criminal case, on the grounds of misdirection of the jury or the improper admission or rejection of evidence, or as to error of any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire record, it appears that the error complained of has probably resulted in a miscarriage of justice, is prejudicial to the substantial rights of the accused, or constitutes a substantial violation of a constitutional or statutory right."

CONCLUSION

Appellee prays that the judgments of convictions of the Louisiana Supreme Court be affirmed and/or in the alternative that this appeal be dismissed for the reason that the circumstances of this case do not present an arrest, conviction and punishment which

infringes upon the freedoms of the First and Fourteenth Amendments and, secondly, that the segregated conditions of the court room, per se, do not deny appellant a fair and impartial trial.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

SARGENT PITCHER, JR.,
District Attorney,
19th Judicial District of Louisiana.

RALPH L. ROY,
Assistant District Attorney,
19th Judicial District of Louisiana,
Baton Rouge, Louisiana.

24 APR 20 1964

IN THE

JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1963

B. ELTON COX,

Appellant,

against

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

**REPLY TO MOTION OF APPELLEE TO AFFIRM
AND/OR DISMISS**

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MURPHY BELL,
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WESTER SWEET,
ERNEST FINNEY.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1963

No. 735

B. ELTON COX,

Appellant,

against

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

**REPLY TO MOTION OF APPELLEE TO AFFIRM
AND/OR DISMISS**

In its motion to affirm and/or dismiss the appeal in this case, appellee, the State of Louisiana, has largely avoided discussing the errors of constitutional interpretation made by the trial court and the Supreme Court of Louisiana. Appellee has instead attempted to state the facts so as to make it appear that no substantial injustice was done in this case, and counsel for the appellant, Rev. Cox, would like to take this opportunity to correct that impression.

The statements of fact in the motion, and in the opinion of the Louisiana Supreme Court, which are adopted in

the motion, give the impression that violence was imminent and that the demonstrators were causing it. This characterization entirely ignores the fact that every witness testified that Rev. Cox was in complete control of the student demonstrators at all times (T. 38, 107, 257, 318, 355), and that the inspector in charge of police believed that the officers were able to handle "any situation that should arise". The demonstration was orderly (see e.g., T. 267-268), and it followed the program which had been shown to the authorities as well as the instructions given by the Chief of Police (T: 516-517). The only "disorderliness" of the demonstration was the instruction by Rev. Cox to the demonstrators to sit at segregated lunch counters until they were served (T. 364, 376). It is said by the Louisiana Supreme Court that Rev. Cox, in his speech to the students, "built them up emotionally"; the fact is, as the witness agreed, that Rev. Cox counseled non-violence even in the face of violence.

This Court is not the proper forum in which argue over the actual occurrences of the demonstration, but we must point out that the record does not support the contention that this was a situation of imminent violence, to which a narrowly-drawn or narrowly-construed regulatory statute might properly have been applied.

The really important point is that no such narrow statute was applied in this case. The trial court held that it was "inherently dangerous and a breach of the peace" (T. 545) for fifteen hundred colored people to protest in downtown Baton Rouge against segregation. The Louisiana Supreme Court defined a breach of the peace in the follow-

ing language: " * * * to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet * * * ." Yet this is one of the statutes which are characterized at page 9 of the motion as having a "fixed, definite, and commonly understood meaning * * * ." On the contrary, this is language which is so general, under the decisions in *Edwards v. South Carolina*, 372 U. S. 229 (1963) and *Terminiello v. Chicago*, 337 U. S. 1 (1948), as to act as a restraint on freedom of speech and assembly. In this case, moreover, the language has been deliberately used to restrain peaceful speech and assembly.

Appellee makes much of the fact that the students occupied a large part of the sidewalk across from the courthouse, and that they allegedly "failed to move on" when the sheriff instructed them to do so.* These allegations, however, are at best peripheral to the true issues in this case. It matters very little what Rev. Cox said, in response to the sheriff, because the fact is that the instruction to move on had been given by the sheriff because he disapproved of Rev. Cox's speech advocating a sit-in (T. 364). Whether or not the students occupied the sidewalk matters very little, because the authorities were willing to permit

* It is claimed that Rev. Cox said "Don't move" when the sheriff instructed the students to move on. This in itself is an extraordinary conclusion to draw from the evidence; only three witnesses recollected this phrase (T. 58, 275, 354) and five others remembered no such thing (T. 82, 106, 286, 315, 373). Rev. Cox himself recollected saying "Don't run" (T. 521ff.) a phrase with an altogether different meaning. The trial judge avoided the whole question by holding that it was "inherently dangerous" for Negroes to demonstrate in front of the courthouse. In the end this dispute over the facts serves only to illustrate the difficulties presented by appellee's characterization of the demonstration.

them to occupy that sidewalk, until Rev. Cox advocated a sit-in. The statutes against breach of the peace and obstructing the sidewalk, whether valid on their face or not, were applied in a discriminatory way, so as to deny to appellant the equal protection of the laws and due process of law. *Niemotko v. Maryland*, 340 U. S. 268 (1951).

For the foregoing reasons, and for the reasons stated in the jurisdictional statement, the motion of appellee, the state of Louisiana, should be denied.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

Nos. 24 and 49

Office-Supreme Court, U.S.

FILED

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JOHN F. DAVIS, CLERK

B. ELTON COX,

Appellant,

against

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

CONSOLIDATED BRIEF FOR APPELLANT

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

Nos. 24 and 49

B. ELTON COX,

Appellant,

against

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

CONSOLIDATED BRIEF FOR APPELLANT

Appellant Rev. B. Elton Cox appeals from two judgments of the Supreme Court of Louisiana entered in the above-entitled case. The first (No. 24 in this Court), rendered on June 28, 1963, affirmed a verdict of conviction for the crimes of breach of the peace and obstructing the sidewalk, and the second (No. 49 in this Court), rendered on November 12, 1963, affirmed a verdict of conviction for the crime of illegally demonstrating in or near a courthouse. All verdicts had been rendered at the same time upon the same trial by the District Court for the Nineteenth Judicial District, Parish of East Baton Rouge, Louisiana, but they were heard separately by the Supreme Court of Louisiana be-

cause of the statutes governing review in Louisiana.* They were appealed to this Court as separate cases, but a single brief for both is being submitted, because there are common issues of fact and law, and because the cases are to be argued together. Appellant's motion to proceed *in forma pauperis* and without a printed record has been granted by this court, and accordingly a short appendix is submitted with this brief.

Opinions Below

The oral opinion of the judge of the District Court given at the end of the trial of this case is unreported and is printed in the Appendix p. 7a. The opinion of the Supreme Court of Louisiana affirming the conviction for breach of the peace and obstructing the sidewalk (No. 24 in this Court) is reported at 244 La. 1087, 156 So. 2d 448 (1963) (Appendix p. 14a). The opinion of the Supreme Court of Louisiana affirming the conviction for illegally demonstrating in or near a courthouse (No. 49 in this Court) is reported at 245 La. 303, 158 So. 2d 172 (1963) (Appendix p. 28a).

Jurisdiction

Appellant was convicted under the Louisiana breach of the peace statute, L.S.A.-R.S. 14:103.1, and the Louisiana statute punishing obstruction of the sidewalk L.S.A.-R.S. 14:100.1, which are set out in the Appendix at pp. 1a, 2a, respectively. Affirming the conviction the judgment of the Supreme Court of Louisiana was entered on June 28, 1963;

* Under Article VII, Sec. 10, Louisiana Constitution, the Supreme Court of Louisiana has general supervisory powers over inferior courts. In addition appeal is available in criminal cases where a sentence of more than six months or a fine of more than \$300.00 has been imposed. The convictions for breach of the peace and obstructing the sidewalk were reviewed under the former provision, and the conviction for illegally demonstrating was reviewed under the latter.

rehearing was denied on October 9, 1963. The appeal to this Court was filed on January 8, 1964.

Appellant was further convicted under a Louisiana statute, L.S.A.-R.S. 14:401, prohibiting demonstrations in or near a courthouse of the State of Louisiana, with the intent of interfering with, obstructing or impeding the administration of justice or of influencing any judge, juror, witness or court officer in the proper discharge of his duty, which is set out in the Appendix at p. 4a. Affirming this conviction the judgment of the Supreme Court of Louisiana was entered on November 12, 1963, rehearing was denied by that court on December 20, 1963. Appeal to this court was filed on March 19, 1964; probable jurisdiction was noted in both cases May 4, 1964, 377 U.S. 921.

The jurisdiction of this court to review both judgments by appeal in this case is conferred by Title 28 of the United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the decision on appeal in this case: *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Winters v. New York*, 333 U.S. 507 (1948); *Herndon v. Lowry*, 301 U.S. 242 (1937).

Questions Presented

By reason of its vagueness and uncertainty, is the Louisiana breach of the peace statute L.S.A.-R.S. 14:103.1 repugnant to the due process clause of the Fourteenth Amendment to the Constitution?

Because they infringe appellant's right to freedom of speech and freedom of assembly, and to petition for redress of grievances, are the Louisiana breach of the peace statute, L.S.A.-R.S. 14:103.1, the Louisiana statute against obstructing the sidewalk, L.S.A.-R.S. 14:100.1, and the Louisiana statute punishing demonstrations in or near a

courthouse, L.S.A.-R.S. 14:401, as interpreted and applied to appellant by the courts of Louisiana, repugnant to the due process clause of the Fourteenth Amendment to the Constitution?

Has the discriminatory administration of all the Louisiana statutes involved in this case deprived appellant of equal protection of the laws and due process of law under the Fourteenth Amendment to the Constitution?

Since there is no evidence to support the charge under the said statute is the conviction of appellant under the Louisiana Statute punishing demonstrations in or near a courthouse, L.S.A.-R.S. 14:401, repugnant to the due process clause of the Fourteenth Amendment to the Constitution?

By being tried in a courtroom that was segregated as a result of state action has appellant been denied equal protection of the laws and due process of law under the Fourteenth Amendment to the Constitution?

Statutes Involved

The statutes involved are Louisiana Statutes Annotated R.S. 14:100.1, R.S. 14:103.1 and R.S. 14:401. They are printed in the Appendix at pp. 1a, 2a, 4a, respectively.

Statement

Protesting against segregation and discrimination against Negroes on December 14, 1961, twenty-three youngsters picketing stores in the downtown area of Baton Rouge, Louisiana were arrested (T. 348, 400, 458) * and incarcerated

* The transcript of the trial in the District Court, though made by a court stenographer, is not physically part of the records prepared by the clerk of the Louisiana Supreme Court. To sup-

in the jail adjacent to the District Courthouse in Baton Rouge (T. 348, 466). Shortly before noon the following day, students from a nearby Negro college, Southern University, began to gather about the old Capitol Building in Baton Rouge (T. 251, 437, 510-512). At that time none of the twenty-three arrested the previous day was being tried or arraigned (T. 201-203, 346-347). About noon the students marched to the Courthouse under the leadership of the appellant, the Rev. B. Elton Cox, a Negro field secretary for the Congress of Racial Equality (T. 468, 513). Mr. Cox conferred with the Sheriff, the Chief of Police and other law-enforcement officers, and explained to them that the students intended to demonstrate in protest against segregation and discrimination in the stores and against the arrest of the pickets. He further presented a program for the demonstration (T. 351, 371, 470, 515). [On cross-examination the Sheriff stated that he had had "no objection" to the demonstration under that program (~~T. 363-364~~). The Chief of Police allowed seven minutes for the demonstration (~~T. 401, 516-517~~), and limited it to the West side of the street, opposite the Courthouse. (~~T. 371, 516~~).

More than fifteen hundred students (T. 51, 71, 269, 313), assembled on the sidewalk on the West side of the street. Curious white people gathered on the opposite side of the street (T. 20, 28, 167). In excess of seventy-five policemen and sheriff's deputies were present. According to the inspector who was in charge of the policemen, they "could handle any situation that should arise" (T. 329). No violence of any kind occurred during the demonstration; on the contrary, all testimony proved that the Rev. Mr. Cox maintained control of the students at all times (T. 38, 107, 257,

plement the records, the transcript of the minutes of the trial, which has been submitted to this court, is referred to by the symbol "T —".

318, 355). [In accordance with the program described to the Sheriff the students pledged allegiance to the flag of the United States, recited the Lord's Prayer, exhibited signs protesting segregation and sang freedom songs. Responding, the students in the jail (the ones who had been arrested the previous day) replied in song (T. 46). Upon hearing the prisoners, the demonstrators uttered a cheer (~~T. 54, 60, 353~~). Mr. Cox made a speech (T. ~~42, 235, 255, 325, 516-518~~) which not only contained nothing of violence in it (T. ~~29, 44, 158, 268, 302~~), but in fact directly forbade violence (T. ~~37, 200, 363~~). Mr. Cox advised that if any of the demonstrators should be attacked, he was not to ~~retaliate~~. According to Cox's own testimony, with which other witnesses were in agreement, (T. ~~29, 37, 53, 105, 153, 196, 272-3~~), he said at the close of his speech:

" * * * all right. It's lunch time. Let's go eat.

There are twelve stores we are protesting. A number of these stores have twenty counters, they accept your money from nineteen. They won't accept it from the twentieth counter. This is an act of racial discrimination. These stores are open to the public. You are members of the public. We pay taxes to the Federal Government and you who live here pay taxes to the state" (T. ~~518~~).

That was the sticking-point for the Chief of Police and the Sheriff (T. 364; 376). Commanding the demonstrators to break up the demonstration, tear gas was released into the group of students, which broke up immediately (T. 377).

~~The Reverend Mr. Cox was arrested and charged with criminal conspiracy, breach of the peace, obstructing the sidewalk, and demonstrating in front of a courthouse with the intent of interfering with, obstructing and impeding the administration of justice, and of influencing a judge, wit-~~

ness or court officer. The trial took place without a jury on January 29 through 31, 1962, in the District Court at Baton Rouge, ~~the very building before which the demonstrators had gathered.~~ The criminal conspiracy charge was dismissed, but Mr. Cox was convicted on the other three counts.

For breach of the peace Mr. Cox was sentenced to serve four months in jail and pay a fine of \$200.00, or in default thereof to serve four months in addition; for obstructing the sidewalk his sentence was five months in jail and a fine of \$500.00; in default thereof to serve five months in addition. For illegally demonstrating near a courthouse he received one year in jail and a fine of \$5000.00; in default thereof to serve one year in addition. All convictions were reviewed in the Louisiana Supreme Court, the first two by way of application for supervisory writs of mandamus, certiorari and prohibition, 244 La. 1087, 156 So. 2d 448 (1963), (Appendix p. 16a) and the latter by appeal, 245 La. 303, 158 So. 2d 172 (1963) (Appendix p. 29a). In each the trial court was sustained.

Because of their repugnancy to the Constitution of the United States, the validity of the statutes involved here was called into question; other federal questions were raised in the District Court by motion to quash prior to trial (1R.16; 2R.22),* by motion in arrest of judgment (1R.30; 2R.13), and by motion for a new trial (1R.35; 2R.18). Each motion was denied, and with the opinions of the District Court, appear in the Appendix at pp. 44a-66a, respectively.

In the application of appellant for writs of certiorari, mandamus and prohibition against his convictions for

* The transcript of the record before the Louisiana Supreme Court in these two cases is referred to by the following symbols:

No. 24: "1R.—"

No. 49: "2R.—"

breach of the peace and obstructing the sidewalk (No. 24) and on his appeal from the conviction for demonstrating illegally (No. 49), the validity of these statutes was again questioned on the ground of their repugnancy to the Constitution of the United States. The decisions of the Louisiana Supreme Court upheld their validity.

The record is clear that the courtroom was segregated ~~by order of the District Court judge. The judge took judicial notice of this fact, stating:~~

"The Court: Also, let the record show that it has been the practice and custom in the East Baton Rouge Parish Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white, and let the record especially show that the judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people" (T. 56, Appendix p. 44a).

The Deputy Sheriff in charge of the jail and a second deputy *testified as to the composition* of the courtroom, the numbers of empty seats reserved for whites, and the number of colored people waiting in the corridors of the courtroom (T. 340-345). These passages in the record appear in the Appendix at pp. 13a, 49a, 58a-71a.] The question of the fairness of the trial was also raised in the motions in the District Court and in the application and appeal to the Louisiana Supreme Court.

Summary of Argument

I The public demonstration of protest which took place herein is a peaceable assembly protected under the Fourteenth Amendment from infringement by the states. By reason of its vagueness and uncertainty, the Louisiana breach of the peace statute, infringes that freedom of speech in a case where, as here, the charge tracks the terms of the statute, the statute must be judged on its face.

II The breach of the peace statute, the statute against obstructing the sidewalk and the statute punishing illegal demonstrations, were administered, interpreted and applied in an unconstitutional manner by the Louisiana Courts. Any demonstration which "arouses from a state of repose" constitutes a breach of the peace said the Louisiana court. A large group in simple assembly on the sidewalk creates a "willful" obstruction of the sidewalk. When the assembly is conducted in protest against an arrest, this is sufficient proof of intent to obstruct justice or influence a court officer. By so determining the Supreme Court of Louisiana failed to recognize or apply the standards laid down by this Court for cases where a state statute touches upon an area of protected expression, and thus the conviction of the appellant resulted in a denial of due process of law. As interpreted these statutes fail to define a crime for which one may constitutionally be convicted, and they act as a restraint of freedom of speech. Furthermore, all the statutes were administered by the authorities so as to discriminate against Rev. Cox because of his protest against segregation.

III No evidence having existed under Louisiana law to prove the necessary intent, to obstruct justice or to influence a court officer, a conviction for illegally demonstrating near a courthouse constituted a denial of due process of law.

IV The trial of a Negro (particularly in a Civil Rights case) in a segregated courtroom is *per se* a denial of equal protection of the laws; by act of the state it implies the inferiority of the defendant, and fosters prejudice in witnesses and is based upon the prejudice of the trier of fact, in this case the court.

V The segregation constituted a denial of a fair trial and thus a denial of elementary due process, because Rev. Cox was protesting segregation; the court showed by its maintenance of segregation both that it was opposed to the protest and that it could not appreciate whether any clear and present danger was presented by the protest, nor the basic denial of due process, based upon its own prejudice. Finally, the discriminatory exclusion of any special group of persons is a denial of a public trial.

ARGUMENT

The Reverend Mr. Cox Was Punished For Peaceful Participation in Demonstration Protected Under the Fourteenth Amendment and First Amendment.

Since the time of the American Revolution peaceful demonstration has been protected as one of the means for the people to express their grievances. The "right of the people peaceably to assemble, to petition the government for a redress of grievances," guaranteed by the First Amendment, and applicable to the states under the Fourteenth Amendment, means nothing if it does not include the right to protest peacefully by non-violent means against manifest injustice. The more powerless, the more oppressed a minority is, the more important to all society is the right of peaceable assembly. Peaceable action in the streets calling attention to the evils of discrimination has been the lifeblood of protest against racial injustice in recent years.

Often it is the only means by which that "free trade in ideas," the essence of free speech, may be obtained. During the last two terms, this Court has reaffirmed the importance of non-violent demonstration as a means of expression. [*Edwards v. South Carolina*, 372 U.S. 229 (1963); *Fields v. South Carolina*, 375 U.S. 44 (1963); *Henry v. City of Rock Hill*, 376 U.S. 776 (1964).] (hereinafter sometimes collectively referred to as the "South Carolina demonstration" cases). Involved in those cases were charges of common law breach of the peace arising out of non-violent street demonstrations in South Carolina. Each resembles the case at bar in many respects. In *Edwards*, the demonstration took place on the State House grounds. One hundred eighty-seven demonstrators sang songs, listened to a speech, but did not obstruct pedestrian or vehicular traffic.

In the *Fields* case, a thousand demonstrators were found by the South Carolina Supreme Court to have blocked the sidewalks and streets in Orangeburg, South Carolina, during a demonstration, 240 S.C. 366, 126 S.E. 2d 6 (1962). The *Henry* demonstrators assembled in front of the City Hall at Rock Hill, and were found to have sung so loudly that work was disrupted in the City Hall. 241 S.C. 427, 128 S.E. 2d 775 (1962). As here, police protection was ample, and little or no threat of violence from bystanders.

Holding that the demonstrations were protected activities, this court stated in *Edwards*:

" * * * the circumstances in this case reflect an exercise of these basic constitutional rights in their most pristine and classic form * * * " 372 U.S. at 235.

So important is speech, that in the above cases this court held it might not be proscribed as a common-law breach of the peace, defined by the Supreme Court of South Carolina:

"By 'peace,' as used in the law in this connection, is meant the tranquility enjoyed by citizens of a municipality or community where good order reigns among its members, which is the natural right of all persons in political society." 239 S.C., at 343-344, 123 S.E. 2d, at 249.

The South Carolina Court had found, in effect, that *any* disturbance of "tranquility" is a breach of the peace; but as this Court said in *Terminiello*, 337 U.S. 1, 4 (1948):

[" . . . freedom of speech . . . is . . . protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest . . . "]

A conviction for disturbance of tranquility has the effect of making "criminal the peaceful expression of unpopular views," *Edwards v. South Carolina*, 372 U.S. 229, 237 (1962); the greater the opposition of the community to the ideas expressed, the more the tranquility will be disturbed. Opposition in the community to the demonstration is not enough to justify a limitation on freedom of speech. It is the duty of the police to preserve and to protect the rights of demonstrators to exercise their freedom. See *Terminiello supra*. Were this not the case all that would be essential to inhibit speech would be threats by those who are not pleased by the views of the speaker. Upon receiving the complaint the police then make the speaker discontinue, or risk arrest, in effect responding to the threats, and giving in to blackmail.

The Louisiana Statute Punishing Breach of the Peace Is Unconstitutional on Its Face Under the Due Process Clause of the Fourteenth Amendment.

Suffering from the same infirmities as the common-law rule found unconstitutional by this Court in the South Carolina demonstration cases, the Louisiana breach of the peace statute under which Rev. Cox was convicted in this case, L.S.A.-R.S. 14:103.1, is unconstitutional for similar reasons under other rulings of this Court. As with other regulatory statutes found invalid on their face and while the state has an interest in the prevention of violence, the statute is so vague and indefinite it permits the punishment of forms of expression which are constitutionally protected. *Schneider v. State*, 308 U.S. 147 (1939); *Thornhill v. Alabama*, 310 U.S. 88 (1940). Such a statute acts as a prior restraint of freedom of speech, casting a pall over every form of expression that falls in its way. In *Thornhill*, *supra*, at 97-98 this Court said:

“ * * * The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. * * * ”

No ascertainable standard of conduct short of interference with constitutional rights is set forth. For a man peaceably to exercise his freedom of speech and to escape punishment is nigh impossible under the statute. See *Hendon v. Lowry*, 301 U.S. 242, 261 (1937).

Vividly illustrated on the face of the Louisiana statute punishing breach of the peace are these vices. Because Mr.

Cox was charged and convicted upon information and evidence couched in the general terms of the statute and not charged with nor convicted of any crime more carefully defined than the crime described in the statute, we urge, under such circumstances, this Court should hold, *Thornhill, supra, Terminiello, supra*, that the statute must be considered improper on its face.

Anyone who crowds or congregates on a sidewalk or street and fails to "disperse or move on, when ordered to do so by any law enforcement officer," * * * "with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby" violates the statute L.S.A.-R.S. 14:103.1.

"Breach of the peace" is not defined in the statute; in attempting to comply, a citizen is thrown back upon the general concept of breach of the peace embodied in the common law. American Jurisprudence states:

"In general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence or tending to provoke or excite others to break the peace, or, as sometimes said, it includes any violation of any law enacted to preserve peace and good order. * * *"
8 Am. Jur. 834 (1937 Ed.).

This notion, concerned with some ill-defined unrest, is fully as vague as the concept disapproved by this Court in the South Carolina demonstration cases. The Louisiana concept of breach of the peace, as expressed by the Louisiana Supreme Court in this case, is even more indefinite:

" * * * 'disturb the peace' in Louisiana means ' * * * to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet.' " 156 So. 2d at 455; Appendix at p. 23a.

This is a quotation from an older case, *Town of Ponchatoula v. Bates*, 173 La. 824, 138 So. 851 (1932). Insofar as existing Louisiana notions of breach of the peace are embodied in the words of the statute, then, it is still further objectionable as invalid because those notions infringe freedom of speech.

Several times this Court has made clear that a generalized concept of breach of the peace is too vague to be applied to constitutionally protected forms of expression. *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940); *Edwards v. South Carolina*, 372 U.S. 229; *Henry v. City of Rock Hill*, 376 U.S. 776 (1964). When the generalized concept is embodied in a statute, by that fact the statute is objectionable. The Louisiana breach of the peace statute purports to punish crowding in the streets and failing to disperse when ordered to do so, if these acts are done with the intent of provoking some ill-defined state of "disquiet", or under circumstances such that this ill-defined state *may be occasioned* (emphasis supplied). No congregation could take place in the street whereby the members could be sure that they were not running the risk of violating the state of mind contemplated by this statute. Congregations in the streets present such important occasions for free expression that this statute results in that "continuous and pervasive restraint on all freedom of expression that might reasonably be regarded as within its purview", fatal to the statute in *Thornhill*, *supra* at 98.* The fact that it is an element of the offense under this statute that the accused has failed to disperse when ordered to do so, only serves to

* The Louisiana legislature obviously understood quite well that this statute would reach forms of expression rather than acts of violence, as it specifically exempted picketing by labor organizations from the effects of the statute. It was passed, moreover, after the present movement against segregation had begun, in the effort to stem the movement. See *Garner v. Louisiana*, 368 U.S. 157, 168 (1961).

dramatize the possibility of "harsh and discriminatory enforcement by local prosecuting officials", which was a further failing of the statute in *Thornhill*, *ibid*. Since a citizen need not obey every order of a policeman it is impossible to determine when the likelihood of that vague disquiet which constitutes the breach of the peace occurs; to obey every order of the police is to accede, literally, to the police state. To refuse to obey is a risk the citizen must assume; that risk must be diminished by reasonable clarity in the statute. Such is not true here. Unless one is given adequate notice where one falls afoul of the act, mere "breach of the peace" should fall for vagueness.

The Laws and Statutes Involved in This Case Were Applied So As to Deprive Appellant of Speech Protected by the Due Process Clause of the Fourteenth Amendment.

A statute may not encroach upon this area of protected expression unless it is " . . . narrowly drawn so as to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State . . . " *Cantwell v. Connecticut*, 310 U.S. 296, 311 (1940). Though the Louisiana Supreme Court has held that the statutes involved in this case were so drawn and applied, this Court has final authority to determine whether, upon the facts as found by the Louisiana Court, a clear and present danger to a substantial interest of the state actually existed. *Pennekamp v. Florida*, 328 U.S. 331, 345 (1946); *Edwards v. South Carolina*, 372 U.S. 299 (1963). Such a determination will show that the Louisiana statutes were applied and interpreted in such a way as to deny due process of law to Mr. Cox.

Breach of the Peace

A long line of decisions by this court has established that a general law punishing breach of the peace may not be used to punish the act of peaceful assembly in the streets, or other forms of peaceful expression. *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Terminiello v. Chicago*, 337 U.S. 1 (1949); *Edwards v. South Carolina*, 372 U.S. 229 (1963); *Fields v. South Carolina*, 375 U.S. 44 (1963); *Henry v. City of Rock Hill*, 376 U.S. 776 (1964).

In *Edwards*, this Court left open the possibility that street demonstrations might constitutionally be limited by a proper exercise of the police power:

"We do not review in this case original convictions resulting from the even handed application of a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be limited or proscribed. If, for example, the petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public, this would be a different case." 372 U.S. at 236.

The Louisiana Supreme Court, 156 So. 2d at 454 (Appendix at p. 21a) held that the breach of the peace statute was such a "precise and narrowly drawn" statute, had the Louisiana Supreme Court interpreted the statute narrowly, it would not have been valid as applied to Mr. Cox, because, as we have urged, the statute is unconstitutional on its face, and Mr. Cox was charged in the general terms of the statute; to have narrowed the meaning of the statute, at the appellate level would have been to convict him of a crime

with which he was not charged.* In any case the Louisiana Supreme Court did not narrow the meaning of the statute so as to make it constitutional. In the effort to define the meaning of "breach of the peace," that court said:

" * * * 'disturb the peace' in Louisiana means ' * * * to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet.' " 156 So. 2d 455; Appendix at p. 10a.

But in *Terminiello, supra*, the Illinois court had defined breach of the peace in terms similar to those used here by the Louisiana Supreme Court.

"Misbehavior may constitute a breach of the peace if it stirs the public to anger, invites dispute, brings about a condition of unrest or creates a disturbance, or if it molests the inhabitants in the enjoyment of peace and quiet by arousing alarm." 337 U.S. at 3.

This court declared that the above standard was an infringement of freedom of speech in these words:

"Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound un-

* The crime of which Rev. Cox was actually convicted, defined by the trial judge, was more extraordinary than the crime charged or the crime defined by the Louisiana Supreme Court. The trial judge held that a mass demonstration by colored people in the "predominantly white business district in the City of Baton Rouge" against segregation is "inherently" a breach of the peace. This ruling clearly makes criminal the peaceful expression of unpopular views (T. 545; Appendix at p. 10a).

settling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, *Chaplinsky v. New Hampshire*, *supra* is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." 337 U.S. at 4.

The rule of the Louisiana Supreme Court has failed to restrict the meaning of breach of the peace to any crime which may constitutionally be forbidden under *Terminiello*. The rule quoted above from *Terminiello* has been held applicable to a non-violent street demonstration, *Edwards v. South Carolina*, 372 U.S. 229, 237 (1963), and thus the Louisiana breach of the peace statute does no more than punish "the peaceful expression of unpopular views." *Ibid*.

That it was unconstitutionally applied is shown by the fact that Mr. Cox spoke with the permission of the authorities until he referred to eating in segregated eating places. Although nothing more than this happened, the meeting was suddenly ordered to disperse, the tear gas followed, and Mr. Cox was arrested thereafter. It is not unreasonable to surmise that the halting of the demonstration and its dispersion were to prevent a situation protected by this Court in *Garner v. Louisiana*, 368 U.S. 157 (1961). *Garner* was decided by this Court but three days before the activity described herein and concerned Baton Rouge.

Obstructing Public Passages

The Louisiana statute L.S.A.-R.S. 14:100.1 punishes any person who "willfully obstructs" the normal use of the sidewalk or street by "impeding, hindering, stifling, retarding or restraining traffic therein or thereon".

The Supreme Court of Louisiana held, as in the case of the peace statute, that this statute was a "narrowly drawn regulatory statute," within the meaning of *Edwards v. South Carolina*, 372 U.S. 229 (1963). Though the defendant was charged in the terms of the statute, it might have been rendered constitutional in a proper case by a narrow definition of the phrase "willfully obstructs." But in this case no more "will" was alleged or proved than the will to congregate on the sidewalk for purposes of peaceful assembly. Since this non-violent demonstration against segregation was a form of expression protected under the Fourteenth Amendment, the Supreme Court of Louisiana in effect held that this protected expression was a "willful" obstruction of the sidewalk. So far from being a narrowly drawn regulatory statute, then, this statute literally punishes free speech on the streets, for the *scienter* necessary for a protest demonstration in the street or on the sidewalk. Any group congregated on the street, whether organized for peaceful purposes or not, may be arrested at any time under this statute.* See Holmes, J., dissenting, in *Abrams v. United States*, 250 U.S. 616, 626 (1919).

The situation in this case resembles that in *Smith v. California*, 361 U.S. 147 (1959). There the defendant was convicted under a statute which punished solely the possession of obscene books, without requiring knowledge of their contents. This court reversed, holding that the statute, lacking an element of *scienter*, acted as a restraint of the free circulation of books. So here, the improper definition of "willful" permits the authorities to prevent all street demonstrations, and thus acts as a damper on such street demonstrations.

* In the case of the statute against obstructing the sidewalk, as in the case of the breach of the peace statute, the Louisiana legislature obviously understood that the statute was applicable to street demonstrations, as it specifically exempted picketing and other "concerted activity" by labor organizations from the statute.

Demonstrating Near a Courthouse

Louisiana statute L.S.A.-R.S. 14:401 punished anyone who pickets, parades, or otherwise demonstrates in or near a courthouse of the State of Louisiana, "with the intent of interfering with, obstructing or impeding the administration of justice, or with the intent of influencing any judge, juror, witness or court officer in the discharge of his duty." The charge against Rev. Cox tracks the terms of the statute.

This Court has many times dealt with the constitutional problem presented in this case, admirably defined by the Louisiana Supreme Court in the decision below in these words:

" * * * to arrive at a proper balance between basic conditions of our constitutional republic—freedom of utterance and peaceful assembly on the one hand, and the proper and impartial administration of justice on the other. * * * " 158 So. 2d at 175; Appendix at p. 32a.

While the present case, that of a criminal sanction for a protest against an arrest, has not been presented to this Court, the same constitutional question has been presented in the cases concerning the sanction of contempt for protest against actions taken by courts in cases pending before them. In a long line of cases, this Court has held that the standard to be applied in determining whether an expression of opinion upon a pending case may be punished by the state is whether that expression presents a clear and present danger to the administration of justice. *Wood v. Georgia*, 370 U.S. 375 (1962); *Craig v. Harney*, 331 U.S. 367 (1947); *Pennekamp v. Florida*, 328 U.S. 331 (1946); *Bridges v. California*, 314 U.S. 252 (1941). The standard applicable in such cases was clearly stated in *Craig v. Harney*, *supra*, and was reaffirmed in *Wood v. Georgia*, *supra*:

"The fires which (the expression) kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil." 331 U.S. at 376, 370 U.S. at 385.

* While the Louisiana Supreme Court correctly apprehended the nature of the constitutional problem, it failed to apply in a speech case the stringent standard of clear and present danger required by this Court under the Fourteenth Amendment. It was content to say simply that it struck a balance between the two competing interests in favor of the administration of justice with little regard to the actual effect of the protest upon the administration of justice. 158 So. 2d at 175; Appendix p. 32a.

No reason exists to apply a different standard to the case of a criminal penalty for a peaceful demonstration in front of a courthouse than the standard of clear and present danger applied in the contempt cases. No distinction should be made upon the supposed ground that a physical demonstration near a courthouse, however peaceful, presents a different or more immediate threat to the administration of justice than a publication, however vituperative.

When the demonstration takes place before the trial or arraignment of the prisoners whose arrest is protested, and when it is peaceful, it seems plain that it presents less of a threat than intemperate new articles written during the actual trial proceedings. It affords more opportunity for a peaceful reply, and that opportunity is at the root of the requirement that speech shall present a clear and present danger before it can be limited by the police power of a state. See Brandeis, *J.*, concurring, in *Whitney v. California*, 274 U.S. 357, 375 (1927).

Nor should it be forgotten that the demonstration was held in this location with police permission. Not in defiance of it. Protesting arrests, singing, responses from the jail hardly constituted an impediment to justice since the jaillees had not even been arraigned. The officials saw the size of the crowd, agreed to the meeting in the vicinity of the Court and jail, knew there was singing to be held and a sermon-like talk to be given protesting the arrest of the people in jail. Except for a preacher's liberty in extended talk, this is what took place. It ill behooves the state to complain when it consented in advance.

In two of the chief cases of contempt by publication decided by this Court, a statement was made by a politically influential person or publication upon a matter actually in the process of decision by the court or its officers at the time. In *Wood v. Georgia, supra*, the defendant, a sheriff, disputed the reasons for calling a grand jury which was then sitting. In *Craig v. Harney, supra*, a newspaper claimed that there had been a miscarriage of justice in a case for which a motion for a new trial was pending. These cases do not present a less immediate threat to the administration of justice than a peaceful demonstration against the arrest of persons not yet arraigned, and the standard applied to them should be applied here.

The statute under which Mr. Cox was convicted, moreover, is a criminal statute for the violation of which a severe penalty is exacted. Such a statute must give a clear standard of conduct, so that a citizen may know how to conduct himself so as to avoid punishment. It requires, if anything, a more exacting standard than a citation for contempt. A vague balance between the competing interests of the administration of justice and freedom of speech fails to supply such a standard. *Herndon v. Lowry*, 301 U.S. 242, 261 (1937).

The Louisiana Supreme Court would have us believe, by its characterization of the facts, that the demonstration was not peaceful, and was in fact a near riot, averted only by the action of the sheriff. 158 So. 2d at 177-178 (Appendix pp. 23a, 24a). Although the Louisiana Supreme Court applied the wrong standard, had its characterization of the facts been accurate, conceivably it might be argued that Mr. Cox presented a clear and present danger to the administration of justice such if some testimony were believed that jail was to be torn down.

To affirm on the basis of such an argument would be error; it would be equivalent to a conviction for a crime with which he was not charged. In any case, the characterization by the Louisiana Supreme Court gives an erroneous impression of the facts, and an independent examination of the undisputed facts on the record, which this Court has the power to make, *Pennekamp v. Florida*, 328 U.S. 331, 345 (1946). Such examination will show that this was a peaceful demonstration; no clear and present danger to the administration of justice existed (T. 35, 38, 90-92, 119, 123, 128, 168-9, 254, 257, 268, 270, 304, 376, 469, 514, 526, 529). The only violence were the acts of the police acting on superior orders.

In defining the phrase, "with the intent of interfering with, obstructing or impeding the administration of justice, or with the intent of influencing any judge, juror, witness or court officer in the discharge of his duty," the Louisiana Supreme Court again violates standards set forth in decisions of this Court. In a proper case, the meaning of this phrase might be sufficiently narrowed so as to cover only situations which present a clear and present danger to the administration of justice. See *Holmes, J.*, dissenting in *Abrams v. United States*, 250 U.S. 616, 626 (1919). But here the only "intent" proved was the intent

to have a demonstration across the street from the courthouse. The prisoners whose incarceration was being protested were not on trial, and their trial was not immediately in prospect (T. 201-203). All the witnesses both for the prosecution and the defense agreed that the purpose of the demonstration was peaceful (T. 29, 37, 44, 158, 268, 299, 302, 363). No evidence was offered that the demonstration was intended to disrupt a trial or to intimidate anyone. Such evidence was in fact specifically excluded by the trial court, and the ruling was affirmed by Louisiana Supreme Court. 158 So. 2d at 176. Both the District Court and the Louisiana Supreme Court found that the necessary intent was proved. In their opinion the intent necessary to violate the statute is no more than the intent necessary to carry out a form of peaceful expression protected under the Fourteenth Amendment, and hence the statute, like the other Louisiana statutes involved here, "makes criminal the peaceful-expression of unpopular views." *Edwards v. South Carolina*, 372 U.S. 229 (1963).

The Conviction of the Appellant Under the Louisiana Statute Punishing Demonstrations in or Near a Courthouse Deprived Him of Due Process of Law Because There Was No Evidence Upon Which the Conviction Could Be Based.

The State of Louisiana failed at the trial of this case to present any evidence of intent to obstruct justice or to influence a court officer, evidence which is required by the Louisiana Statute punishing demonstrations in or near a courthouse. The only evidence of any sort presented against the Rev. Mr. Cox was the simple fact that he had led a demonstration in a manner prescribed by the police, across the street from a courthouse in protest against the arrest of prisoners then incarcerated in the jail attached to the court-

house. To treat this simple demonstration as evidence of such a danger or of intent to obstruct justice would infringe the right of freedom of speech, *supra* p. 10-12, and thus Mr. Cox has been convicted without evidence of any crime which could constitutionally be proscribed by the legislature of Louisiana. Such a conviction constitutes a denial of due process of law under the Fourteenth Amendment. *Thompson v. Louisville*, 362 U.S. 199 (1960), *Garner v. Louisiana*, *supra*. We must assume at the outset, however, that merely demonstrating to protest an arrest is not, "because it could not be," *Thompson v. Louisville*, 362 U.S. 199, 206 (1960), enough to show a clear and present danger to the administration of justice or of intent to obstruct justice or influence an officer of the court. Concepts applied by the Louisiana Supreme Court in analogous cases support this conclusion even though this statute has not previously been construed by the Supreme Court of Louisiana. In *Graham v. Jones*, 200 La. 137, 159; 171, 179, 183, 7 So. 2d 688, 695, 699, 702, 703 (1942), the clear and present danger rule outlined by this Court in *Briggs v. California*, 314 U.S. 252 (1941) was applied to dismiss five convictions for contempt by publication. It was not applied in the present case of a demonstration outside a courthouse, which is constitutionally indistinguishable. In *State v. Daniels*, 236 La. 998, 109 So. 2d 896 (1959), a rigorous standard of intent was required for a statute similar to the one in this case. In that case the defendant, a convict who had struck a prison guard was charged with the crime of "Public Intimidation", being the use of force upon a public officer "with the intent to influence his conduct in relation to his position, employment, or duty." L.S.A.-R.S. 14:122. The Louisiana Supreme Court reversed the conviction on the ground that merely to have struck the guard was not enough to show the required intent. Here, however, the Louisiana Supreme Court held that a simple demonstration is enough to show intent to obstruct

justice or influence a court officer in the discharge of his duty. The Louisiana Supreme Court has failed in this case to apply the rigorous standards for clear and present danger and for intent which it has developed in closely similar cases, and it has thus affirmed a conviction based upon no evidence of acts which may be punished either under Louisiana law, or The United States Constitution.

Discriminatory Administration of the Louisiana Statutes Involved in This Case Has Deprived Appellant of Due Process of Law and Equal Protection of the Laws Under the Fourteenth Amendment.

Passing from the construction of the statutes involved here to the manner of their administration, the facts in this case show that the statute was used by the state and city authorities, and by the District Court judge as well, to discriminate against active campaigning for integration of the races. The Louisiana Supreme Court has attempted to characterize this demonstration in such a way, that it appears that a riot was "inevitable," and was averted only by timely action by the authorities. It refers to the speech by Rev. Cox as "inflammatory" and to the demonstration as "fiery" and "frenzied." 158 So. 2d at 177; Appendix at p. 36a. Nevertheless, all witnesses agreed and the state's witnesses and the Louisiana Supreme Court made much of the fact, that Mr. Cox was in complete control of the students at all times (*Ibid*; T. 38, 107, 257, 318, 355).

The speech of Mr. Cox was not only not a violent statement (T. 158, 268) but according to all the witnesses, it actually recommended peaceful protest, turning the other cheek (T. 299, 363) and love for one's enemy (T. 254). In fact Sheriff Clemmons specifically stated that the "inflammatory" element in Cox's speech was his advocacy of a sit-in

at segregated lunch counters (T. 364). There was testimony that there was no threat of violence from the demonstrators; one witness for the state, in fact, felt that there was no fear of violence except from the white onlookers (T. 128), and the police were well able to handle them (T. 329). The demonstration was carried on in the manner prescribed by the chief of police and the sheriff, and they were willing to permit and did permit the demonstration until Rev. Cox advocated a sit-in at lunch counters.* They felt that to be a breach of the peace (T. 364, 376) and the trial judge agreed with them when he said:

"It must be recognized to be inherently dangerous and a breach of the peace to bring 1,500 people, colored people, down in the predominantly white business district in the City of Baton Rouge and congregate across the street from the Courthouse and sing songs as described to me by the defendant as the CORE national anthem carrying lines such as "black and white together" and to urge those 1,500 people to descend upon our lunch counters and sit there until they are served. That has to be an inherent breach of the peace, and our statute 14:103.1 has made it so" (T. 545; Appendix p. 10a).

Thus all the authorities intended to permit the demonstration only so long as it did not openly oppose segregation.**

* The Louisiana Supreme Court stated that Rev. Cox told the demonstrators, "Don't move," in reply to the order of the Sheriff to break up. 156 So. 2d at 448. While it is disputed just what Rev. Cox did say, if anything, it is clear that the question whether he meant to obey the order or not is only relevant if the command was made in a valid manner (T. 58, 82, 106, 275, 315, 354, 373, 521).

** Other actions of the Louisiana authorities arising out of this demonstration have reinforced the proof of this intent. In *Lemons v. CORE*, an injunction was granted in the United States District Court for the Eastern District of Louisiana against the

Under the decisions of this Court, to permit a demonstration until it advocates ideas with which the authorities or the general public disagrees is a discriminatory application of the law which contributes both an interference with freedom of speech and a denial of equal protection of the laws under the Fourteenth Amendment. See *Niemotko v. Maryland*, 340 U.S. 268 (1951); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Terminiello v. Chicago*, 337 U.S. 1 (1948).

A Trial in a Courtroom Segregated by Imposition of the State Constituted a Denial of Equal Protection of the Laws and Due Process of Law.

The trial judge stated that the courtroom was segregated for "the purpose of maintaining order in the courtroom"; he had ordered that half of the white section be turned over to Negroes (T. 5-6; Appendix p. 13a).^{*} See *Johnson v. Virginia*, 373 U.S. 61 (1963). In *Johnson* the conviction of the defendant, a Negro, for contempt for sitting in the section reserved for whites in a Virginia courtroom, was reversed because such a conviction would be a denial of equal protection of the laws. Whether, as we urge, such unconstitutional state action improperly permeates the trial itself of Mr. Cox, a Negro defendant, in a case arising out of a civil rights demonstration in protest against segregation

activities involved in this case, under the old Civil Rights Act, 42 USCA 1985. This injunction was vacated by the Fifth Circuit, 323 F. 2d 54 (1963) and this Court denied certiorari, 375 U.S. 992 (1964).

^{*}The testimony of policemen who were appointed to count the number of whites and Negroes inside and outside the courtroom indicated that there were forty-two seats "reserved" for whites, of which eight were filled on one occasion and fourteen on another. In the meantime there were counted waiting in the hallways eighty-eight Negroes at one time, and two hundred and fifty at another (T. 340-344).

and against the arrest of others who had protested against segregation is the issue in the case at bar. Answering this question squarely in the negative, the Louisiana Supreme Court stated:

"In the case before us, there is no charge against the defendant for having violated the court-imposed seating arrangement and none of the parties upon whom the segregation was imposed are before this court in this case. Hence the Johnson case is not authority for reversing this conviction. It has not been made to appear that the segregation resulted in a miscarriage of justice to this defendant. L.S.A.-R.S. 15:557. If it were otherwise, it would result that every Negro convicted in that court in the past would be entitled to have his conviction set aside" (56 So. 2d at 456; Appendix p. 26a).

Nevertheless, the trial of Mr. Cox resulted in a denial of equal protection of the laws and due process and "a miscarriage of justice."

Even though discrimination is not specifically directed toward the person being tried, this Court has held that discrimination in the administration of justice is a denial of equal protection of the laws. Racial discrimination in the selection of the grand jury by which a Negro is indicted is a denial of equal protection of the laws, regardless of the fairness with which the trial jury may have been chosen. *Eubanks v. Louisiana*, 356 U.S. 584 (1958). This decision is not made upon a direct showing that injustice was done to the Negro accused in the particular case, but because the Fourteenth Amendment is intended to prevent any state from creating, in the words of Mr. Justice Strong:

" . . . legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the

rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race." *Strauder v. West Virginia*, 100 U.S. 303, 308 (1879).

The trial of a Negro in a segregated courtroom is unconstitutional for similar reasons. By the very conduct of the proceedings, the defendant and the society around him are reminded of his inferior status. Over a range of cases, moreover, more Negro defendants will be convicted under a system of segregation than without it. Racial segregation exists to reinforce prejudice against Negroes and to maintain their lower status. Conversely, studies have shown that integrated contact between the races produces more friendly relations and a change in attitude. See e.g., Wilner, Walkley & Cook, *Human Relations in Interracial Housing III* (1955). It is the very nature of prejudice to prevent an observer from making a fair appraisal of the facts. Racial prejudice makes it difficult for an individual even to follow a train of reasoning about Negroes, let alone to determine the facts. Allport, *The Nature of Prejudice* 168 (1954 Ed.).*

Segregation affects not only the preceptions and reasoning of white witnesses, and the deliberations of a white trier of fact, but it affects Negro witnesses equally if not more. In a segregated community Negroes often find it inadvisable to tell the truth to white people, to the point where such evasion becomes a habitual form of "accommodation" to segregated society. See Dollard, *Caste and Class in a South-*

* Two parallel syllogisms, both fallacious, and both involving statements about Negroes, were tested. Prejudiced individuals identified one as valid and the other as invalid.

ern Town 259 (1937 Ed.) & Hyman, *Interviewing in Social Research*, 159 ff. (1954).*

Segregation produces a situation in which it is difficult for witnesses, both Negro and white, to testify accurately to the facts regarding Negro defendants, and it is difficult for the trier of fact fairly to weigh the evidence in such cases. Trials under such circumstances must necessarily produce different results, over the long run, than trials free of prejudice. The effects of segregation in the courtroom cannot be clearly separated from the effects of segregation elsewhere in the community. The great difference is that the trial court has no control over segregation elsewhere in the community, but it does over segregation in the courtroom. It is important, moreover, that a court of law should give notice that it is conducted without prejudice, even when, or rather especially when, the community is prejudiced. The moral effect of integration in the courtroom can be very great, and it may contribute a great deal to the creation of an atmosphere where fair perception, veracity, and free deliberation can prevail. It is absurd to say that segregation in the courtroom has no effect on the protection afforded a Negro defendant by a court. It has obvious effects, which create a denial of equal protection of the laws, and which require reversal of the conviction of a Negro defendant. It is apparent that sanctions other than the reversal of convictions have failed to end segregation in the courtroom, and this action therefore becomes the only effective alternative. See *Mapp v. Ohio*, 367 U.S. 643 (1961).

The Reverend Mr. Cox was vigorously attempting to eliminate the discrimination based upon such prejudice.

* Study showing that a large number of Negroes in Memphis, Tennessee, gave substantially different answers, on matters of fact as well as of opinion, to Negro and to white interviewers.

The considerations outlined above, showing that trial of a Negro defendant in a segregated courtroom is a denial of equal protection of the laws, apply *a fortiori* to a case where, as here, the defendant is also being tried for engaging in a protest against segregation. All the witnesses and the trier of fact will tend to have reactions conditioned by their prejudices and fears, which will be reinforced by segregation. In a segregated courtroom the trial of Mr. Cox must have been a denial of a fair and impartial tribunal. When the court itself expresses its own built-in prejudice as to the status of Negroes, no fair trial can result. In this case the judge had to make a number of decisions about the effect of a protest demonstration upon the community. He had to decide, for example, whether the demonstration was a "breach of the peace" and whether it presented a clear and present danger to a substantial interest of the state. These are questions of mixed law and fact, which leave a large area of discretion for the judge; he had to decide whether the protest actually attacks the fabric of society and presents a danger of disorder. Surely he is disqualified from making that decision when he discloses that he both favors and administers the system against which the protest is directed. The judge betrayed his opinion about the effects of the demonstration when he said that the courtroom was segregated "in the purpose of maintaining order" (T. 6; Appendix p. 13a); more sharply such prejudice was illustrated when the Court indicated that the demonstration of Negroes against segregation in downtown Baton Rouge was an "inherent breach of the peace" (T. 545; Appendix p. 10a). Whether advocacy of integration as Cox preached, would lead to disorder, was foreclosed to him, just as it was foreclosed by his automatic maintenance of segregation in Court. Were Cox successful in his preaching it would affect, not only the restaurants in Baton Rouge, but the very Courtroom in which this Judge sat.

Segregation has created a special pattern of prejudice against a person such as Mr. Cox, who protests against it, and the judge, as trier of fact, by his administration of a segregated courtroom, has shown that he participates in the prejudice. The judge has demonstrated that he is prejudiced about a central issue in this case, and thus Rev. Cox has been denied a fair and impartial tribunal. See *In Re Murchison*, 349 U.S. 133 (1955).

The segregation of the courtroom, furthermore, has denied the Rev. Mr. Cox a public trial, within the meaning of the Sixth Amendment. The requirement of a public trial is applicable to trials in state courts under the due process clause of the Fourteenth Amendment, *Re Oliver*, 333 U.S. 257 (1948). Two of the bases for the requirement of a public trial, as outlined by Dean Wigmore, are to discover new witnesses and make existing witnesses disinclined to falsify. Wigmore, *Evidence*, Section 1834 (1940 Ed.). These two elements of the requirement have been infringed in this case, where the officers who made a count of the persons present, inside and outside the courtroom, found that colored people were waiting to get in, while seats were empty in the courtroom (T. 340-341, in the Appendix at pp. 67a, 68a). To exclude them in a discriminatory way was to deny the petitioner the essential elements of a public trial. Cf. *United States v. Kobbli*, 172 F. 2d 919 (3 Cir. 1949).

A trial, in a courtroom segregated by the act of the judge, denied Mr. Cox equal protection of the laws: more than that, it denied him the elements of a fair trial; further it denied him a public trial as required by the Constitution.

Conclusion

For the foregoing reasons it is respectfully submitted that the judgments of the Louisiana Supreme Court should be reversed.

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MARVIN KARPATKIN.

Proof of Service

This is to certify that I have forwarded a copy of the foregoing consolidated brief and appendix in the within-described cases to the Hon. Jack P. F. Gremillion, Attorney General of the State of Louisiana, Office of the Attorney General, New Orleans, Louisiana.

CARL RACHLIN

Attorney for the Appellant

Statutes Involved

LOUISIANA STATUTES ANNOTATED—R. S. 14:100.1

§100.1 OBSTRUCTING PUBLIC PASSAGES

No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.

Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions.

Whoever violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both fined and imprisoned.

This section shall not be applicable to the erection or construction of any barricades or other forms of obstructions as a safety measure in connection with construction, excavation, maintenance, repair, replacement or other work, in or adjacent to any public sidewalk, street, highway, bridge, alley, road, or other passageway, nor to the placing of barricades or other forms of obstruction by governmental authorities, or any officer or agent thereof, in the proper performance of duties. Added Acts 1960, No. 80, §1.

Emergency. Effective June 22, 1960.

Statutes Involved

LOUISIANA STATUTES ANNOTATED—R. S. 14:103.1

§103.1 DISTURBING THE PEACE

A. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place or building or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person, or

(2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(3) while in or on any public bus, taxicab, boat, ferry or other water craft or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in sub-section (2) supra, to, toward,

or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refuses to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof, shall be guilty of disturbing the peace.

B. Whoever commits the crime of disturbing the peace as defined herein shall be punished by a fine of not more than two hundred dollars, or imprisonment in the parish jail for not more than four months, or by both such fine and imprisonment. Added Acts 1960, No. 69, §1.

LOUISIANA STATUTES ANNOTATED—R. S. 14.401

“§401. DEMONSTRATIONS IN OR NEAR BUILDING HOUSING A COURT OR OCCUPIED AS RESIDENCE BY JUDGE, JUROR, WITNESS OR COURT OFFICER

B { “Whoever, with the intent of interfering with, obstructing or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any soundtruck or similar device or resorts to any other demonstration in or near such building or residence, shall be fined not more than five thousand dollars or imprisoned not more than one year, or both.

“Nothing in this section shall interfere with or prevent the exercise by any court of the State of Louisiana of its power to punish for contempt. ~~Acts 1950, No. 177, §§1, 2.~~”

No. 42,201

STATE OF LOUISIANA—PARISH OF EAST BATON ROUGE
NINETEENTH JUDICIAL DISTRICT COURT

SARGENT PITCHER, JR., District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that B. ELTON Cox, late of the Parish of East Baton Rouge, on the Fifteenth (15th) day of December in the year of our Lord One Thousand Nine Hundred and Sixty-one (1961) with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, unlawfully violated the provisions of R. S. 14:401, in that he, with the intent of interfering with, obstructing, and impeding the administration of Justice, and with the intent of influencing a Judge, witnesses and Court Officers in the discharge of their duty, did picket, parade and engage in a demonstration in front of and near the East Baton Rouge Parish Courthouse, a building housing a Court of the State of Louisiana and occupied and used by such Judges, witnesses and Court Officers, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State and against the peace and dignity of the same.

SARGENT PITCHER, JR.
District Attorney,
Nineteenth Judicial District of Louisiana

STATE OF LOUISIANA—PARISH OF EAST BATON ROUGE
NINETEENTH JUDICIAL DISTRICT COURT

SARGENT PITCHER, JR., District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that B. ELTON COX, late of the Parish of East Baton Rouge, on the Fifteenth (15th) day of December in the year of our Lord One Thousand Nine Hundred and Sixty-one (1961) with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, unlawfully violated R. S. 14:103.1, [illegible]. in that he did under circumstances such that a breach of the peace could be occasioned thereby, congregate with others in and upon a public street and upon public sidewalks in front of the Courthouse in the Parish of East Baton Rouge, a public building, and in and around certain entrances of places of business and failed and refused to disperse and move on when ordered to do so by the Sheriff of East Baton Rouge, a person duly authorized to enforce the laws of this State, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

SARGENT PITCHER, JR.
District Attorney,
Nineteenth Judicial District of Louisiana

**Opinion of Hon. Fred A. Blanche, Judge of the Nineteenth
Judicial District of East Baton Rouge, Louisiana
(540)**

REASONS FOR JUDGMENT

By the Court:

Before rendering a verdict, I want to caution the members present in court that I expect complete orderliness to be carried out just as it has been while arguments of counsel were going on and just like it has been throughout this entire trial.

First of all, the Court would like to thank both counsel for their respect to the Court and toward each other. The Court takes cognizance of the fact that during a heated trial sometimes both witnesses and counsel and the Court have heated exchanges, and I think that in a case of the character of this case involving demonstrators or rather the leader of a demonstration protesting segregation in this community, it is particularly admirable. It is admirable because, as counsel pointed out in argument, we have lived here peacefully in this community under a system of segregation from time immemorial and then all of a sudden in one day we have a protest of 1,500 people strong in the City of Baton Rouge and against what has been a custom for so long.

I want to dictate into the record exactly all of my reasons for judgment because much of the evidence adduced by both the prosecution and by the defense was based on hearsay, but I, as the judge of this court, am able to (541)

discriminate as to what is hearsay and what is not hearsay and what, in my opinion, is valid evidence.

With regard to the charge in 42,199, the Court finds B. Elton Cox not guilty. (I promise you, if I hear any further demonstration, I will empty the courtroom.) I find B. Elton Cox not guilty because he is charged under our attempt statute which is 14:26, and I cannot find him guilty of this charge because it is my opinion that the law of this state is that there must be some overt act perpetrated in violation of the statute which he is charged with, namely, 14:100.1 and 14:100.3, and the only evidence to

prove this was that the defendant told the demonstrators to go down to the lunch counter and stay there. Our law, however, I think is that there must have been some overt act on the part of those with whom he was in conspiracy to violate that law, and I think probably had it not been for the police breaking up the demonstration that he would have been found guilty of this charge. I do think that the police broke it up before any one of them could make one move in that direction.

Now, with regard to the charge that is contained in bill No. 42,200. In bill No. 42,200 he is charged:

"...in that he did willfully obstruct the free, convenient and normal use of a public sidewalk within the City of Baton Rouge thereby impeding, hindering and restraining passage thereon."

(542)

This Court takes cognizance of the fact that there has been testimony of competent witnesses from our police force who have had experience in estimating crowds; I have seen the pictures taken by Mr. Bob Durham which reflect to me that the sidewalk was effectively blocked. To place some 1,500 people— The evidence was that the people did not block the service station area which is shown on a map of E. R. Nilson Map Service, but the testimony of both the police and disinterested witnesses not in anywise connected with law enforcement as well as the photographs taken by the photographer in the news film show that in the area ten feet wide according to this map and some 256 feet long that there were contained by the minimum estimate some 1,500 people; and if 1,500 people can congregate in 256 feet without blocking it, then the Court would have to be blind to physical facts. So, for that reason, as a consequence of what I saw on the film and from what I heard, I say and hold that this sidewalk on the west side of the Courthouse was obstructed for the convenient and normal use as a public sidewalk in the City of Baton Rouge and that it did impede and hinder and restrain passage thereon in the direct words of the statute that this bill of information which I read from tracks the statute. I find the defendant guilty of that charge.

With regard to No. 42,202 wherein he is charged with violating R. S. 14:103.1, R. S. 14:103.1 says that:
(543)

"Whoever with intent to proyoke a breach of the peace, or under circumstances such that a breach of peace may be occasioned thereby: (1) crowds or congregates with others ... upon a public sidewalk, (and, of course, I have omitted the parts of the statute which are not pertinent) or any other public place or building (which is what he is charged with in the bill of information) ... and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the State of Louisiana ..."

commits the crime of disturbing the peace. With regard to this statute, an attack has been made on this statute on the grounds that it is unconstitutional because it seeks to prohibit or punish the defendant by virtue of a criminal statute when he has a right as a citizen to peacefully protest against the segregation laws of the State of Louisiana or to protest against racial segregation and discrimination.

First of all, let me say that this Court respects the right of freedom of speech. It respects the right to picket, but even the right to picket and the right of freedom of speech is subject to limitation. Restrictions have been placed on
(544)

the right to picket by the Federal Government and elsewhere under our state law involving labor activities with regard to their right to picket. In any event, picketing is said to be lawful when it is peaceful because it represents freedom of speech. Now, the right to protest is lawful, and the right to protest is lawful if it is conducted in a lawful manner. Our courts have held that picketing is unlawful when it is mass picketing, and if this protesting is a form of freedom of speech, I say it is unlawful when it is done en masse by some 1,500 people of the colored race parading on the streets of Baton Rouge and congregating on the sidewalk in violation of this statute.

If this statute is a "segregation statute," it should be one of the segregation statutes that should be upheld by every court in this land. It should be upheld because it undertakes to understand the mood and the nature of our people, both colored and white. It recognizes, as this Court recognizes, that in the City of Baton Rouge there is racial tension. It recognizes, as our legislators must have recognized, that there is racial tension within the State of Louisiana; and the intent of the statute is to give the police the power to punish or disband or break up mass demonstrations, especially where they might involve racial overtones. It doesn't take a smart judge or it doesn't take any evidence to be presented to this Court to know that since (545)

the advent or since the decision of the United States Supreme Court (I think the case was *Brown v. Topeka*), that racial tension has mounted in the south, and understandably so, because after living under that system for hundreds and hundreds of years the change didn't just occur overnight. They recognize the basic human instinct that there would be resentment toward integration in the South, and I think our Legislature wisely took steps to have a statute on the books that would give law enforcement authorities the power to make it unlawful for anyone to demonstrate in such a manner so as to effectively block the sidewalk, which was done in this case. It should be inherently dangerous and a breach of the peace, recognizing racial tension as we have it in the south. It must be recognized to be inherently dangerous and a breach of the peace to bring 1,500 people, colored people, down in the predominantly white business district in the City of Baton Rouge and congregate across the street from the courthouse and sing songs as described to me by the defendant as the CORE national anthem carrying lines such as "black and white together" and to urge those 1,500 people to descend upon our lunch counters and sit there until they are served. That has to be an inherent breach of the peace, and our statute 14:103.1 has made it so.

Opinion of District Court

DECISION

(545)

* * *

With regard to bill No. 42,201, that is where B. Elton Cox is charged that he:

(546)

"... unlawfully violated the provisions of R. S. 14:401, in that he, with the intent of interfering with, obstructing, and impeding the administration of Justice, and with the intent of influencing a Judge, witnesses and Court Officers in the discharge of their duty, did picket, parade and engage in a demonstration in front of and near the East Baton Rouge Parish Courthouse, a building housing a Court of the State of Louisiana and occupied and used by such Judges, witnesses and Court Officers."

Mr. Jones has filed into the record this map which shows that the group which Reverend Cox led to the west side of America Street could not have been more than 103 feet from the steps of the courthouse to where his group was congregated directly across the street. That would be 103 feet and the Court feels that that would qualify under the definition of being near. With regard to the evidence as to whether or not he was the leader of the said group, he was the one who dealt with the officers, he is the Field Secretary of the Congress of Racial Equality and the evidence, not only from his own testimony but from Ronnie Moore and others of his affiliation with CORE, leaves no doubt in this Court's mind that he was the leader of the group across the street from the Courthouse. That is also accurately reflected in the films. The real question, though, in

(547)
that statute is with regard to the intent. The bill charges "... in that he, with the intent of interfering with, obstructing, and impeding the administration of Justice, and with the intent of influencing a Judge . . ." I asked many questions of the accused and others such as Ronnie Moore

as to just what did they propose to accomplish by congregating on the other side of the Courthouse, on the street on the other side of the Courthouse, singing these songs and protesting the "illegal incarceration" of their fellow members in the East Baton Rouge Parish jail.

The defense is that they had no intent to influence anyone, that this is just mere freedom of speech, that this is their right to protest out against anything which they happen to think is a social wrong and a social injustice. Of course, even our Federal Government has recognized the danger of freedom of speech expressed in this manner and has made it a violation of Federal law to picket and parade and engage in a demonstration in front of or around a Federal Court. Our state statute, which was copied after the Federal statute, was enacted even before the Supreme Court issued its initial school integration decision. This statute was on our books in the year 1950, long before the school integration decision, and was copied after the Federal statute.

Now, what do people do when they come and parade in (548)

front of the Courthouse? I was not a witness to the demonstration myself personally, but I was present in the Courthouse shortly before it occurred. I was present in this Courthouse when evidently the police had gotten notice that some demonstration was impending, and my reaction was to get away from it as fast as I could. If you asked me what I was afraid of, I can tell you best by saying that having lived here in the South all of my life and being present around a demonstration of some 1,500 colored people who are protesting against racial discrimination and being a part of this community and living in this community where I know that especially of late that there is tension between the races, I felt that it would be unpleasant in some way or it would be some unpleasant thing to me to see; and because I know that there is tension between the races, I think I felt apprehensive that trouble or violence could erupt from such a situation. That is what I felt in my heart and that is why I left, because I didn't want to be anywhere near or in connection with it. I can say that it had influence on me. I can say that, it made me

fearful. Perhaps a better word would be "apprehensive," that there might be some racial violence. I can say as a judge that that is the way I felt. With all my heart I can say that. Then when I try to think of, if you want to protest, why protest around the Courthouse, I get the feeling that there is some subtle intimidation of me or of anyone of us who is responsible for upholding the laws of the State (549)

of Louisiana and maintaining, according to certain of our laws, segregation.

For example, Mr. Jones, who has practiced law in my court for some time with success, sometimes without, well knows that Division "B" and every other division up here has been segregated. He well knows that, and I think he also knows, too, that if I would just say to everybody white and colored, "Let's just all mix up together in the courtroom at the same time," I think that it would be calculated to cause disorder in court. Maybe some time that situation might not be, but he ought to know and I do know right now that it would cause disorder. When he makes such a statement in the presence of a courtroom almost entirely filled with colored persons and knowing the situation as he does, I think this is some intimidation of me. The Court gave half the section that was usually reserved for whites to the colored spectators in addition to the half that they have always customarily had, and he intimates that the Court is being unfair by allowing this trial to go on in a segregated courtroom. Yes, I feel that there is some intimidation of me, especially when there are some 250 colored people standing in the halls outside waiting to get in and overcrowd this courtroom when there is no place for them to sit, if I gave them the whole courtroom.

In any event, I felt as a judge the subtle intimidation, (550)

and while I know that he protests bitterly against it as merely a freedom of his speech, I am sure when our Federal Government devised this statute which our state has copied that perhaps the Communists must have felt the same way.

Therefore, the Court finds the defendant B. Elton Cox guilty of bill No. 42,201.

. . .

Opinion of the Supreme Court of Louisiana

(1) in case No. 24 in this Court

SUPREME COURT OF LOUISIANA

No. 46,395

STATE OF LOUISIANA

versus

B. ELTON COX

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE

HONORABLE FRED A. BLANCHE, JR., JUDGE

No. 46,396

STATE OF LOUISIANA

versus

B. ELTON COX

IN RE: B. ELTON COX APPLYING FOR WRITS OF CERTIORARI,
MANDAMUS AND PROHIBITION TO THE NINETEENTH
JUDICIAL DISTRICT COURT, PARISH OF EAST BATON
ROUGE, STATE OF LOUISIANA

SUMMERS, Justice.

In these consolidated cases¹ defendant, B. Elton Cox,
was charged by the district attorney of East Baton Rouge

¹ There were four bills of information filed against the accused
that were consolidated for trial below. On one charge involving

Parish with obstructing public passages as defined and prohibited by R. S. 14:100.1. He was convicted, sentenced (2)

to pay a fine of \$500 and to be imprisoned in the parish jail for a period of five months, and, in default of the payment of the fine, to be imprisoned an additional five months. An appeal was taken in this case and is docketed in this court under Number 46,395.

By separate bill of information Cox was charged with disturbing the peace as defined and prohibited by R. S. 14:103.1. He was convicted, sentenced to pay a fine of \$200 and to imprisonment in the parish jail for a period of four months, and, in default of the payment of the fine, to be confined in the parish jail for four months. The accused having no right of appeal in this latter case, made application to this court for writ of certiorari, mandamus and prohibition which we granted under our supervisory powers to review the correctness of certain actions below.²

The bill of information in No. 46,395 charges that defendant "did violate the provisions of R. S. 14:100.1 in that he did wilfully obstruct the free, convenient and normal use of a public sidewalk within the City of Baton Rouge,

criminal conspiracy the accused was acquitted; another charge of obstructing justice is on appeal in this court and is separately docketed; the remaining two of the four charges are the subject of this opinion.

² In both of these cases the accused was incarcerated in the parish prison pursuant to the sentences which were decreed to run consecutively. But, originally, because of the trial court's failure to allow proper delay after verdict and before sentence as required by R. S. 15:521 we granted writs of habeas corpus in both of these cases. In our review of the trial court's action (See *State v. Clemmons*, 243 La. 264, 142 So. 2d 794 (1962)) the writs were made peremptory, the sentences were annulled and set aside and the accused was ordered released on bail until such time as legal sentences were imposed and the accused was afforded an opportunity to take the procedural steps necessary to bring the matter before this court either on appeal or by writ application.

When the cases were again resumed below, the accused filed certain motions, perfected bills of exceptions and, in due time, was again sentenced as outlined in the body of this opinion.

(3)

thereby impeding, hindering and restraining passage thereon."

The pertinent parts of the statute relied upon by the State provide:

A "No person shall willfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.

Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions. * * * R. S. 14:100.1

The bill of information in No. 46,396 charges that defendant "violated R. S. 14:103.1, * * * in that he did under circumstances such that a breach of the peace could be occasioned congregate with others in and upon a public street and upon public sidewalks in front of the Courthouse in the Parish of East Baton Rouge, a public building, and in and around certain entrances of places of business and failed and refused to disperse and move on when ordered (4)

to do so by the Sheriff of East Baton Rouge, a person duly authorized to enforce the laws of this State."

The pertinent portion of the statute upon which this charge is based provides:

C "A. Whoever with intent to provoke a breach of the peace or under circumstances such that a breach of the peace may be occasioned thereby: (1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as

picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place or building, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any

(5) municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person * * * shall be guilty of disturbing the peace * * *

The defendant filed motions to quash and motions for bills of particulars to each of these bills of information prior to trial. These motions were overruled and the cases proceeded to trial, where these facts were established.

On the morning of December 15, 1961, the defendant, Cox, as the unquestioned leader, with a crowd of Negroes variously estimated at 1,500 to 3,800 (we think 2,000 persons is a fair conclusion to be derived from the evidence) assembled in the heart of Baton Rouge in the vicinity of the Old State Capitol Building, a short distance from the parish courthouse. Shortly before noon, Cox led these demonstrators in an orderly fashion to the vicinity of the parish courthouse, where the sheriff, chief of police and a substantial contingent of approximately eighty law enforcement officials had gathered in preparation for the march upon the courthouse. Twenty-three Negroes had

been arrested the day before for demonstrations in Baton Rouge and they were at that time imprisoned in the parish jail located in the upper floor of the courthouse building.

Arriving near the courthouse in the vanguard of the marchers, Cox was confronted by the sheriff and chief of police and was asked what his intentions were. He announced to them that the marchers were demonstrating (6)

against segregation and their activities would be confined to a few songs, a speech, and peaceful demonstrations, the whole of which would consume only a few minutes. The sheriff then advised Cox to confine his demonstration to the time mentioned and no more.

The marchers then occupied the sidewalk across the street from the western entrance of the courthouse. The testimony and motion pictures in evidence unmistakably establish the fact that the marchers completely occupied the entire sidewalk for the greatest portion of a block across from the courthouse in such a manner that no passage was possible thereon. All of the entrances to many offices facing that sidewalk were blocked, their occupants being unable to enter or leave. In the words of one witness the demonstrators were "tightly packed" along most of the sidewalk. Unmistakably, too, these activities resulted in an obstruction of the street separating the sidewalk occupied by the marchers and the courthouse. Because of this, it was necessary to reroute traffic away from that street. Meanwhile, several hundred white persons had gathered in front of the courthouse across the street from the demonstrators.

There were silent prayers and a display of signs, which the demonstrators had kept hidden in their clothing. These signs being the identical ones used by the demonstrators who had been arrested the day before. All of these activities took place under Cox's command and according to instructions he issued during each phase of the demonstration.

Cox then made a speech which was in effect "a protest against the illegal arrest of some of their members." He admonished the multitude of demonstrators to remain

(7)

peaceful and generally built them up emotionally for further sit-in demonstrations which he instructed them to conduct at lunch counters in the business district of the city upon leaving the scene.

The crowd then sang songs, answered by the prisoners in the jailhouse, and this in turn evoked loud and frenzied outbursts and "wild yells" from the demonstrators assembled on the sidewalks.

Whereupon "grumbling" was heard among the white people, a feeling of "impending excitement" was apparent to all and a fear arose among those present that they were "about to have a riot." Several witnesses testified that in their lifetime no demonstration of this nature or scope had ever taken place in Baton Rouge. As one witness expressed it the crowd was "rumbling." In the large crowd the "tension was running high." Some of the witnesses felt the demonstrators were about to storm the courthouse to get the prisoners who had been arrested the day before.

At this time the prisoners in jail were "hollering", "screaming", "beating on bars", "beating on walls and so on" trying to attract the attention of the demonstrators across the street.

The sheriff, feeling that a riot was imminent, and fearing the crowd would get out of hand instructed Cox by means of a loudspeaker so that all present could hear to "move on" and "break it up", that he had had his time. Cox then instructed the demonstrators by saying "Don't move" and by his actions and demeanor defied the sheriff's orders. The demonstrators and Cox stood immobile. They refused to move on.

(8)

The police then dispersed the crowd with tear gas and Cox was arrested the next day.

Four causes are assigned by the accused for setting aside the conviction below.

First, it is asserted that the specific laws under which he was charged, tried and convicted (R. S. 14:100.1 and R. S. 14:103.1) are unconstitutional in their application, for the conviction thereunder infringes upon the defen-

dant's right of free speech protected by the First Amendment of the United States Constitution which the States cannot deny its citizens because of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

Second, the claim is made that these laws and the bills of information are too vague and general and hence violate the due process and equal protection clauses of the Fourteenth Amendment.

Third, it is contended that Cox's trial and conviction were violative of the Fourteenth Amendment for there was no evidence tending to prove the crime charged.

Fourth, it is contended that the segregated conditions in the courtroom during the trial denied Cox a fair trial in violation of the Sixth and Fourteenth Amendments.

Defendant's first contention is based upon the proposition that the statutes (R. S. 14:100.1 and R. S. 14:103.1) prohibiting the obstructing of public passage and disturbing the peace, under which defendant was convicted, are unconstitutional in their application in this case. The defendant asserts that if those statutes are construed to con-

(9)
vict defendant for his action in obstructing the sidewalks while demonstrating against segregation it deprives him of the freedom of assembly and freedom of speech and the right to peacefully picket guaranteed by the First Amendment to the Constitution of the United States. Under the due process and equal protection of the laws clause of the Fourteenth Amendment, it is contended, the State of Louisiana must afford the right of freedom of speech to this defendant. Defendant relies upon the case of *Thornhill v. Alabama*, 310 U. S. 88, 60 Sup. Ct. 736, 84 L. Ed. 1093 (1940), holding that peaceful picketing was within the liberties protected by the First and Fourteenth Amendments. The argument is advanced that such interest as the State of Louisiana has in protecting the public peace is not substantial enough to justify this prosecution which has the effect of denying to the accused the guarantees of freedom of speech and expression.

Thus we understand the contention to be that even though the statute might be constitutionally enforced under

other circumstances, it cannot be invoked to punish this demonstration which the defendant asserts is no less an expression than is speech against segregation; and this freedom of expression, like freedom of speech, is protected by the First Amendment. Citing concurring opinion of Mr. Justice Harlan in *Garner v. Louisiana*, 368 U. S. 157, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961).

The United States Supreme Court has long ago announced that these First Amendment freedoms are protected by the Fourteenth Amendment from invasion by the States. *Edwards v. South Carolina*, 372 U. S. 229, 83 Sup. Ct. (10)

Ct. —, 9 L. Ed. 2d 697 (1963); *Thornhill v. Alabama*, supra; *Cantwell v. Connecticut*, 310 U. S. 296, 60 Sup. Ct. 900, 84 L. Ed. 1213 (1940); *DeJonge v. Oregon*, 299 U. S. 353, 57 Sup. Ct. 277, 81 L. Ed. 270 (1937); *Stromberg v. California*, 283 U. S. 359, 51 Sup. Ct. 532, 75 L. Ed. 1117 (1931); *Whitney v. California*, 274 U. S. 357, 47 Sup. Ct. 641, 71 L. Ed. 1095 (1927); *Gitlow v. New York*, 268 U. S. 652, 45 Sup. Ct. 625, 69 L. Ed. 1138 (1925).

But the right of freedom of speech is not absolute and a State may by general and non-discriminatory legislation, under its police power, regulate the exercise of that freedom. *Cantwell v. Connecticut*, supra.

Our inquiry, then, must be directed to the regulation of the constitutional guarantee and a careful consideration of whether that regulation is within the allowable area of state control. And so in this inquiry we must look to the conduct to be limited or proscribed.

The statutes in question do not come within the objection that they punish conduct which is so generalized as to be "not susceptible of exact definition" as was the case in *Edwards v. South Carolina*, supra. To the contrary, in each instance the proscribed conduct is precisely and narrowly defined for it is to "obstruct * * * any public sidewalk * * * by impeding, hindering, stifling, retarding or restraining traffic or passage thereon" in one instance which is proscribed and it is those who "under circumstances such that a breach of the peace may be occasioned thereby: (1) crowds or congregates with others * * * in or upon * * * a public sidewalk" who are guilty of disturbing

(11)

the peace in the other instance. See also *Garner v. Louisiana*, 368 U. S. 147, 82 Sup. Ct. 248; 7 L. Ed. 2d 207 (1961), *Town of Ponchatoula v. Bates*, 173 La. 824, 138 So. 851 (1933).

Laws having the character of those under attack have been before the courts of last report in other States, and have been upheld as reasonable regulations in the exercise of police power. *City of Tacoma v. Roe*, 190 Wash. 444, 68 P. 2d 1028 (1937); *State v. Sugarman*, 126 Minn. 477, 148 N. W. 466, 52 L. R. A. (N. S.) 999 (1914); *Benson v. City of Norfolk*, 163 Va. 1037, 177 S. E. 222 (1934).

In the statutes under consideration there is no discrimination, but where labor picketing is concerned a clearly defined exclusion recognized in *Thornhill v. Alabama*, *supra*, is set forth.

In *Edwards v. South Carolina*, *supra*, the court announced that no infringement upon constitutional guarantees would be involved "If, for example, petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public * * *." And this is the precise nature of the regulation which these contested statutes invoke. The reasons which support such enactments are obvious and have been approved on many occasions. They are that:

"Municipal authorities, as trustees of the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which streets are dedicated. So long as legislation to this end does not abridge the con-

(12)

stitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a con-

stitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion." *Schneider v. State*, 308 U. S. 147, 160, 60 Sup. Ct. 146, 84 L. Ed. 155 (1939).

And on this authority, and others, it is manifest that the right to freely speak against segregation, if that was the true motive of the demonstrators in the case at bar, bears no relation to facts involving two thousand persons marching against the halls of justice and obstructing the public sidewalks there in such a manner that a violation of the (13)

statute proscribing that conduct is manifest. These demonstrators, like other citizens, must confine their exercise of constitutional freedoms within lawfully regulated limits of those freedoms.

In support of the second grounds for setting aside this conviction, it is asserted that these laws and the bills of information are too vague and general and hence violate the due process and equal protection clauses of the Fourteenth Amendment.

R. S. 14:103.1 is said to be ambiguous for it is not clear whether the prosecution must show an actual disturbance or only circumstances such that a disturbance may be occasioned. In either event, however, we think there is no ambiguity in that language of the statute for to "disturb the peace" in Louisiana means " . . . to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." *Town of Ponchatoula v. Bates*, 173 La. 824, 138 So. 851 (1932). To "breach the peace" has the identical meaning in our view and the statute so declares, for it provides that "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach may be occasioned thereby" commits certain acts "shall

be guilty of disturbing the peace." Because the words of the statute have a fixed, definite and commonly understood meaning and a meaning ascribed to them by this court, they are not ambiguous nor is it objectionable that the statute seeks to proscribe conduct which will result in a disturbance of the peace. The statute may lawfully have the prevention of a disturbance as its object as well as punishing (14)

an actual disturbance. Therefore the accused had adequate notice of the proscribed conduct. *Garner v. State of Louisiana*, 368 U. S. 157, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961).

With respect to R. S. 14:100.1 the contention is made that the bill of information charging a violation of that statute is fatally defective because it fails to inform defendant of the nature and the cause of the accusation against him, though it is conceded that the statute may be sufficient to describe or legally characterize the offense. U. S. Const. amend. VI; La. Const. of 1921 art. I, §10; R. S. 15:2, R. S. 15:5 and R. S. 15:227.

The Louisiana Constitution, like the United States Constitution, provides that in all criminal prosecutions the accused has a right to be informed of the nature and cause of the accusation.

The argument is advanced here that one cannot be charged with obstruction "of a public sidewalk within the City of Baton Rouge . . ." One must be charged with obstruction of a particular sidewalk, i.e., " . . . that sidewalk on the West side of St. Louis Street, in the City of Baton Rouge, Louisiana, identified by municipal number 200, bounded on the North by . . . and bounded on the south by . . ." But we cannot agree with the contention; the quoted language of the bill of particulars in the beginning of this opinion refers to the sidewalk in "front of the Courthouse", which, together with the date of the occurrence, is definite and clear and furnishes the requisite information to satisfy the constitutional test, which is threefold:

(15)

First, the statement of the accusation should inform the accused of the charges that will be brought against him at the trial in order that he may properly defend himself. Second, the trial judge should be informed by the indict-

ment of what the case involves, so that, as he presides and is called upon to make rulings, he may do so intelligently. Third, the indictment should form a record from which it can be clearly determined whether or not a subsequent proceeding is barred by the former adjudication.

When the accusation fulfills these purposes, it satisfies the constitutional mandate that the accused must be informed of the nature and cause of the accusation. *State v. Scheler*, 243 La. 443, 144 So. 2d 389 (1962).

The third contention charged is without merit.

This court is limited in the scope of its review in criminal matters by Article VII, Section 10 of the Constitution of this State "to questions of law only." Although it is recognized in our jurisprudence that a proper interpretation of the foregoing constitutional provision permits a complaint that a conviction based upon "no evidence at all" presents the question of law whether it be lawful to convict an accused without any proof whatsoever as to his guilt, it is firmly established that it is only when there is no evidence at all upon some essential element of the crime charged that the court may set aside a verdict. But, where there is *some* evidence to sustain the conviction, *no matter how little*, this court cannot pass upon the sufficiency thereof. That comes within the exclusive province of the trial judge or jury. *State v. Copling*, 242 La. 199, 135 So. 2d 271 (1961). (16)

Undoubtedly, from the facts recited, there is some evidence. In our view there is ample evidence to sustain this conviction.

The final grounds relied upon to reverse this conviction is that racial segregation existed in the court where defendant was tried and convicted and this segregation denied him a fair trial in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

The record undoubtedly establishes that racial segregation existed in the courtroom as it had for many years.

On April 29, 1963, the United States Supreme Court held that "State-compelled segregation in a court of justice is a manifest violation of the State's duty to deny no one the equal protection of its law." *Johnson v. Virginia*, 31

U. S. L. Week 3353 (U. S. April 29, 1963). But in the Johnson case the objection to segregation was made by a Negro who had been arrested for contempt of court for sitting in seats assigned for white citizens, and the arrest and conviction was for that conduct. In the case before us, there is no charge against the defendant for having violated the court-imposed seating arrangement and none of the parties upon whom the segregation was imposed are before this court in this case. Hence the Johnson case is not authority for reversing this conviction. It has not been made to appear that the segregation resulted in a miscarriage of justice to this defendant. R. S. 15:557. If it were otherwise, it would result that every Negro convicted in that court in the past would be entitled to have his conviction set aside.

For the reasons assigned the conviction and sentence are affirmed.

REHEARING REFUSED

OCT 9 1963

STATE OF LOUISIANA vs. B. ELTON COX—No. 46,395.

McCALEB, J., Dissenting.

The ruling herein that the bill of information is sufficient to apprise the accused of the nature and cause of the accusation against him is in conflict with our recent decision in *State vs. Smith*, 243 La. 656, 146 So. (2d) 152, handed down on November 5, 1962.

In the *Smith* case the defendants were charged in a bill of information containing two counts with violating (1) R. S. 14:100.1 (obstructing public passages) and (2) R. S. 14:103.1 (disturbing the peace) under allegations similar to those made in the separate bills of information which have been upheld in the instant matter. The Court, after setting forth the settled jurisprudence of this State to the effect that it is not a sufficient compliance with the constitutional mandate of Section 10 of Article 1 of the State Constitution (that the accused shall be informed of the nature and cause of the accusation against him) for the bill of information to be couched in the language of the statute when the statutory words do not, themselves, set forth the elements necessary to constitute the offense intended to be punished (see, among other cases, *State vs. Verdin*, 192 La. 275, 187 So. 666; *State vs. Varnado*, 208 La. 319, 23 So. (2d) 106 and *State vs. Blanchard*, 226 La. 1082, 78 So. (2d) 181), quashed the bill of information, holding that the provisions of R. S. 14:100.1 and 14:103.1 were not specific enough to support a charge drawn in their language and that allegations of the particular facts were required in order to comply with the Constitution.

The motion to quash should be sustained.

REHEARING REFUSED

Oct 9th 1963

Opinion of Louisiana Supreme Court

(1) in case No. 49 in this Court

SUPREME COURT OF LOUISIANA

No. 46,618

STATE OF LOUISIANA**v.****B. ELTON COX**

**APPEAL FROM DIVISION "A" OF THE NINETEENTH
JUDICIAL DISTRICT COURT****HON. FRED A. BLANCHE, JR., JUDGE****FOURNET, Chief Justice.**

This case was previously before us on an appeal taken by the defendant, B. Elton Cox, but the bills reserved during his trial were not then considered inasmuch as the only question presented for determination was the legality of the sentence imposed. Finding he had been sentenced within twenty-four hours after his conviction, contrary to the provisions of R. S. 15:521, the sentence was annulled and set aside, the defendant ordered released on bail until such time as legal sentence was imposed, and, in the meanwhile, he was afforded the opportunity to take any procedural steps to which he was entitled during the delay provided by that statute. See, *State v. Cox*, 243 La. 917, 148 So. 2d 600.¹

¹ For the same reason the sentences originally imposed following his conviction under two other statutes were set aside on writs granted to review this action by the trial judge. See, *State ex rel. Cox v. Clemmons*, 243 La. 264, 142 So. 2d 794.

(2)

This appeal is from the defendant's conviction of violating Section 14:401 of the Revised Statutes of 1950² and his sentence thereunder to "pay a fine of \$5,000 and to be confined in the parish jail for one year, or in default of the payment of said fine to be imprisoned one year additional, this sentence to run consecutively with" the sentences that day imposed under two other convictions that were affirmed by this court in a decision handed down June 28, 1963. *State v. Cox*, — La. —, 156 So. 2d 448. The defendant in this case, as in the companion case, is relying for the reversal of his conviction and sentence on five Bills of Exceptions reserved and perfected during the trial, although in the record they are not numbered and considered in the order in which they were reserved.³

These three charges, as well as a charge of criminal conspiracy under R. S. 14:26 of which this defendant was exonerated by the trial judge, grew out of the same incident and were, by agreement, consolidated for trial, the evidence adduced at that time being made applicable to all. The basic attack on the legality of the conviction is, in essence, identical in all three cases, the only material difference being the facts and contentions specifically applicable to the charges under the statute involved in each.

² R. S. 14:401 is in that section of our criminal code dealing with "Offenses Affecting Law Enforcement." Its pertinent portion provides: Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the State of Louisiana, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more than five thousand dollars or imprisoned not more than one year, or both."

³ The 1st was reserved when the trial judge overruled the motion to quash the information; the 2nd when he ruled the state's answer to a request for a Bill of Particulars was adequate; the 3rd is levelled at a purported failure to secure an impartial trial because of the segregated character of the courtroom; and the 4th and 5th, respectively, when the judge overruled motions for a new trial and in arrest of judgment.

(3)

In considering these companion cases we found it difficult, as we do here, to answer the arguments of defense counsel without a great deal of duplication and repetition, particularly since the last two bills include the contentions raised in the first three with the usual additional assertion there is no evidence to support the conviction; hence, in order to avoid such repetition and duplication, we adopt the four basic causes assigned by the accused for the reversal of his conviction and sentence as succinctly stated in the opinion in *State v. Cox*, — La. —, 156 So. 2d 448:

"First, it is asserted that the specific laws under which he was charged, tried and convicted * * * are unconstitutional in their application, for the conviction thereunder infringes upon the defendant's right of free speech protected by the First Amendment of the United States Constitution which the States cannot deny its citizens because of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

"Second, the claim is made that these laws and the bills of information are too vague and general and hence violate the due process and equal protection clauses of the Fourteenth Amendment.

"Third, it is contended that Cox's trial and conviction were violative of the Fourteenth Amendment for there was no evidence tending to prove the crime charged.

"Fourth, it is contended that the segregated conditions in the courtroom during the trial denied Cox a fair trial in violation of the Sixth and Fourteenth Amendments."

The argument by defense counsel in the case at bar is also almost identical with that presented in the companion cases, both orally and in brief, and, like the Bills of Exceptions, are not only lengthy and repetitious, but, when properly analyzed, as we found in these cases (Nos. 46,395 and

46,396 on the docket of this court), basically unsound in that they are without foundation in fact or in law.

Defendant's first contention is that R. S. 14:401—prohibiting any form of demonstration in or near a building housing a court of the State of Louisiana, or in or near a (4)

building or residence occupied or used by a judge, juror, witness, or court officer, with the intent of interfering with the administration of justice, or with the intent of influencing such judge, juror, witness, or court officer in the proper discharge of his duties, under which statute the defendant was convicted—is unconstitutional in its application in this case.

While defense counsel concede that interfering with the administration of justice is illegal, as is also the influencing of a judge, juror, witness, or court officer in the proper discharge of his duties, it is contended that if the statute is construed to convict him for demonstrating with his followers in front of the East Baton Rouge Parish courthouse, it is unconstitutional in that it deprives him of his right to peacefully assemble and speak freely, as guaranteed by the First Amendment to the Constitution of the United States; further, that in denying him these rights, it also violates the equal protection and due process clauses of the Fourteenth Amendment to the federal constitution.

In considering similar contentions urged in the two companion cases, we recognized, as did the court below, that under decisions of the Supreme Court of the United States the freedoms guaranteed individuals under the First Amendment are protected by the Fourteenth Amendment from invasion by the states, citing a number of authorities whereby this country's highest court established this rule in the jurisprudence. But we also pointed out that the United States Supreme Court has recognized that the right of freedom of speech and of the press is not absolute, and held that a state may, by general and non-discriminatory legislation regulate the exercise of that freedom under its police power. *Cantwell v. Connecticut*, 310 U. S. 296, 60 Sup. Ct. 900, 84 L. Ed. 1213.

Unquestionably these rights, freedoms, or privileges of peaceful assembly and of expression and discussion—how-

ever they may be considered—as well as the impartial administration of justice that is guaranteed under the Sixth Amendment to the Constitution of the United States, are all vital and important to the concepts on which this nation was founded. To paraphrase Mr. Justice Frankfurter in (5)

his concurring opinion in *Pennekamp v. Florida*, the claims with which we are faced are not those of right and wrong, but of two rights, each highly important to the well-being of society, the core of the problem being to arrive at a proper balance between basic conditions of our constitutional republic—freedom of utterance and peaceful assembly on the one hand, and the proper and impartial administration of justice on the other, and since the latter is one of the chief tests of the true concepts of our constitutional government, it should not be made unduly difficult by irresponsible actions.

In his excellent dissertation on the subject matter, which we adopt as based on sound reasoning and unassailable logic, Justice Frankfurter continues: "Without, a free press there can be no free society. Freedom of the press, however, is not an end in itself but a means to the end of a free society. *The scope and nature of the constitutional protection of freedom of speech must be viewed in that light and in that light applied.* The independence of the judiciary is no less a means to the end of a free society, and the proper functioning of an independent judiciary puts the freedom of the press in its proper perspective. *For the judiciary cannot function properly if what the press does is reasonably calculated to disturb the judicial judgment in its duty and capacity to act solely on the basis of what is before the court.* A judiciary is not independent unless courts of justice are enabled to administer law *by absence of pressure without*, whether exerted through the blandishments of reward or the menace of disfavor. * * * A free press is not preferred to an independent judiciary, nor an independent judiciary to a free press. *Neither has primacy over the other; both are indispensable to a free society.* The freedom of the press in itself presupposes an independent judiciary through which that freedom (whether of utterance, expression, speech, or peaceful assembly) may, if necessary,

be vindicated. And one of the potent means for assuring judges their independence is a free press." *Pennkamp v. Florida*, 66 Sup. Ct. 1029, 328 U. S. 331, 90 L. Ed. 1295. (The emphasis and language within brackets has been supplied.)

(6)

We think it proper to mention here and now that R. S. 14:401 was not, as contended by defense counsel and urged in two of the bills reserved (to the denial of a motion for a new trial and one in arrest of judgment), adopted by the Louisiana legislature "for the specific purpose and intent to implement and further the state's policy of enforced segregation of races." Instead, it was almost a duplicate of an act introduced in Congress in 1949 (Senate Bill No. 1681 and House Bill No. 3766) condemning picketing, parading, and demonstrations in the environs of federal courts, and passed in 1950 with the full support and approval of the American Bar Association for the reason that such conduct in the immediate vicinity of a building or residence housing a court or court officer was anathema to our concepts of justice according to law. The only difference in the federal statute (18 USCA 1507) and our Act No. 177 of 1950 (now R. S. 14:401), as reflected by the wording of our statute as set out in Footnote No. 2, is that in place of the words "in or near a building housing a court of the United States," our legislature substituted the words "in or near a building housing a court of the State of Louisiana."

The legislative history of the federal act on which ours was patterned discloses it was passed because of picketing conducted by large crowds outside of a federal district court building in Los Angeles, but, primarily, as the result of the disgraceful picketing and demonstrations in, around, and near a federal building in New York housing, among other courts, the one in which Judge Harold R. Medina was—for a period in excess of 9 months in 1949—endeavoring to conduct with some semblance of order the trial of 10 of the top leaders of the communist party in the United States, despite the attempt of followers of this philosophy to turn the trial into a travesty of justice by insults, jeers, and harassments through printed signs, calls, loudspeakers, and

other methods of persecution heaped upon Judge Medina and court officers in an effort to intimidate the Judge in particular in the proper and impartial trial of that case. *It is significant to note, however, that the statute in its operation is not limited to any particular group or person. It applies alike to all.* And although we can find no other (7)

decision of any court in which the constitutionality of this and like statutes have, heretofore, been assailed, we now hold that R. S. 14:401 is constitutional and was legally enacted under the police power with which this state is endowed to insure the orderly and impartial administration of justice.

The contention that the statute itself, as well as the Bill of Information, are too vague and uncertain to inform the defendant of the nature of the charge against him, as required by Section 10 of Article I of the Constitution of Louisiana; R. S. 15:227; and the Sixth Amendment to the Constitution of the United States, is without merit. As shown above, the mischief sought to be denounced by the statute is as clear as the English language can make it, and since, in drawing the Bill of Information, the district attorney not only tracked the language of the statute itself, but gave such additional facts and circumstances as were necessary to inform the defendant of the nature of the charge against him and also furnish the basis for a plea of former jeopardy, or autrefois acquit, in the event another charge covering this same incident was ever returned against him, it fully complies with all pertinent constitutional and statutory requirements. The Fifth Amendment to the Constitution of the United States; Section 9 of Article I of the Constitution of Louisiana; R. S. 15:274-283; *State v. Straughan*, 229 La. 1036, 87 So. 2d 523; *State v. Scheler*, 243 La. 443, 144 So. 2d 389, and the authorities therein cited.

Any additional information thought necessary for the defense of Cox was available to counsel through the means of a Bill of Particulars. However, in resorting to this by motion, counsel only requested that the state advise "whether or not the defendant, in any manner, threatened or intimidated any Judge, witness and/or Court Officer in

the discharge of their respective duties, and, if so, give the names and addresses of the Judges, witnesses and/or Court Officers allegedly so threatened or intimidated. Also, state how, when and where the threats and intimidations were made, if any." The second bill was reserved when the trial judge maintained the assertion of the district attorney in his answer that this information was neither relevant nor material for the trial of defendant's case, and in this court (8)

counsel has not shown either orally or in brief (1) in what respect the lower court erred by such ruling, (2) that this information was necessary or relevant under the statute, or (3) that such information was necessary for his defense.

The statute does not make threats or intimidations ingredients or elements of the mischief sought to be prohibited. The sole object is, as previously stated, to make the courts secure from undue interference or harassment by parades, picketing, and demonstrations in or near a building where courts in which the due administration of justice is dispensed are housed, or in or near the residence of officers of such courts.

The contention that there was no evidence tending to prove the criminal charge against the defendant also lacks substance. The jurisdiction of this court in criminal matters is limited to questions of law alone under Section 10 of Article VII of the Constitution of Louisiana. And although there are decisions of this court recognizing that where there is no evidence at all to support the establishment of an essential element of the crime charged a question of law that we may review is presented (*State v. Di Vincenti*, 232 La. 13, 93 So. 2d 676; *State v. La Borde*, 234 La. 28, 99 So. 2d 11; and *State v. Bueche*, 243 La. 160, 142 So. 2d 381, as well as the authorities therein cited), where there is some evidence to sustain the conviction the sufficiency thereof is a matter that lies within the exclusive province of the trial judge and/or jury, and is not reviewable by this court. *State v. Brazzel*, 229 La. 1091, 37 So. 2d 609; *State v. Domino*, 234 La. 950, 102 So. 2d 227; and *State v. Copling*, 242 La. 199, 135 So. 2d 271, as well as the authorities therein cited.

In our opinion there is ample evidence to sustain the conviction in this case. The record of the testimony (made

a part in its entirety by defense motions for a new trial and in arrest of judgment) discloses that according to the estimate of Cox himself between 1,500 and 3,800 colored people congregated in mass formation a couple of blocks (9)

from the courthouse on December 15, 1961. This was not only the largest mass grouping of any people in that or the downtown Baton Rouge area within the memory of any of the witnesses, but was composed largely of students from Southern University, a state university for colored people located a few miles north of Baton Rouge, that had absented themselves from school on that day in order to participate in this demonstration. All were admittedly well trained and indoctrinated and subject to any desired activity required by Cox by so simple a signal as the snapping of his fingers.

This large mass of demonstrators was met by local law enforcement officers, and, when questioned, Cox informed them they were preparing to move on the courthouse in protest against the incarceration (on the fourth floor of that building) of some 23 colored people who had been "illegally" arrested the day previous; whereupon Cox was informed this would avail him and his followers nothing, the proper remedy being to resort to the courts since only there could it be decided whether these people had, indeed, been "illegally" arrested.* And despite the fact Cox told the officers he and the demonstrators were going to the courthouse anyway and would there *peacefully* for a few minutes by singing a hymn and patriotic song, praying, and pledging allegiance to the flag, upon arrival across the street from the front of the courthouse, and at a signal from Cox, and demonstrators immediately pulled from beneath their coats theretofore hidden placards and signs with shouts and yells that interspersed the singing and other parts of the purported "program," with the result that, in return, those in the jail answered by yelling, screaming, singing, and banging on the walls and doors of the cells in which they were lodged on that side of the building. Cox

* It does not appear from the record that any attempt whatsoever had been made to secure the release of these 23 persons on bail, or by resort to the available writ of habeas corpus.

added to the situation that had by then reached a high pitch of emotional tension by making an "inflammatory" speech, causing some of the officers to feel this now disorderly and seething mob intended to storm the courthouse and liberate the 23 people there incarcerated, and that a riot was inevitable.

(10)

The Sheriff, sensing the seriousness of this explosive situation, by means of a loudspeaker ordered the demonstrators to move on. However, Cox, and on his instruction the group, openly defied this command and continued the "fiery" and "frenzied" demonstration, in which they were still being joined by the 28 people incarcerated in the building, despite a second admonition by the Sheriff. It was only by the use of tear gas that the Sheriff, his deputies, and other law enforcement officers (about 80 in all) were able to disperse the group. The trial judge who presided over these proceedings against Cox—and who, with one or more of the other three judges having chambers in this building in which they had been holding court since early in September, would eventually be required to determine in a proper trial whether the incarcerated people had been "illegally" arrested—stated in his reasons for judgment that he was so "fearful" and "apprehensive" of the outcome of this demonstration by such a large mass of people in the area of the courthouse he was, in fact, intimidated, and, upon learning the demonstration was imminent, closed his office and left the building.

These facts belie defense argument that by his conviction Cox and his followers were denied the right to "peacefully" assemble as guaranteed by the First and Fourteenth Amendments to the federal constitution.

Moreover, while the courts have recognized that picketing is an exercise of a form of free speech that is protected by these constitutional shields, this sweeping analogy as first enunciated by the United States Supreme Court in the case of *Thornhill v. State of Alabama*, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093, has since been greatly refined and restricted. For example, this high court in *Hughes v. Superior Court of State of California*, 339 U. S. 460, 70 S. Ct. 718, 721, 94 L. Ed. 985, pointed out that " * * * while picket-

*ing is a mode of communication it is inseparably something more and different * * * since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated.'*

(11)

** * * the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communications. * * * It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance. * * * 'a state is not required to tolerate in all places and all circumstances even peaceful picketing * * *.'*" In addition, mass picketing is not only reprobated—particularly where it interferes with and hampers others in the orderly discharge of their duties and their right to be where they are in connection with them—but picketing that is not peaceful is prohibited. See the annotation on this subject in 32 ALR 2d 1026, particularly the section No. 6 on page 1036, as well as the supplements thereto. (The emphasis has been supplied.)

From the foregoing it is manifest that the view of the incident as now contended by Cox bears no relation whatever to the established facts disclosing that between 1,500 and 3,800 people marched "en masse" against the halls of justice and acted near such halls in a manner calculated to interfere with the orderly administration of justice. As stated in our decision in the companion cases, "These demonstrators, like other citizens, must confine their exercise of constitutional freedom within lawfully regulated limits of those freedoms." Or, as Judge Learned Hand put it in upholding the conviction of the 10 communist leaders tried before Judge Medina, "Nobody doubts that when the leader of a mob already ripe for riot gives the word to start, his utterance is not protected by the Amendment." See, *United States v. Dennis*, 183 F. 2d 201.

The final error complained of in this case—that the spectators in the courtroom in which Cox was tried were segregated, thus denying him a fair trial in violation of the

Sixth Amendment to the federal constitution, and the equal protection and due process clauses of the Fourteenth—was adjudicated adversely to the defendant in our decision in the companion cases.

Counsel do not claim that Cox did not receive a fair and
(12)

impartial trial in accordance with the accepted rules and regulations fixed for the orderly trial of cases in the courts of this state, as required by our constitution and statutes, or point out in what manner he was prejudiced by the separation of the spectators in the courtroom where he was tried. Instead, it is contended that the constitutional rights of "these spectators" were violated during the process of his trial, and it is his right to assert the denial of the rights of these people thus purportedly occurring.

One need only review the record in this case to readily discern the defendant received a fair and impartial trial, being given every consideration and protection afforded all persons accused of crimes under our constitutional and laws by a judge who acted throughout with great patience and forbearance in an effort to maintain a reasonable semblance of order in the courtroom during the trial, as well as to accommodate the colored spectators, even authorizing the use by them of all seats not then occupied by the white people. Finally, on the third day of the trial, he went so far as to have an officer of the court count the number of seats still vacant and then go into the corridors outside the courtroom and inform those congregated there of their availability. Nevertheless, the trial continued with many still remaining vacant.

To hold, as contended by Cox, that his conviction is a nullity merely because of the segregated condition of the courtroom, would, of necessity, make every conviction of an accused during the past years in all of the courts of the state, and regardless of race, nullities, with the result that everyone now confined in our penal institutions would be entitled to have his conviction set aside, and these thousands of criminals would then be turned loose on the people of the state.

For the reasons assigned, the conviction and sentence are affirmed.

Motions in Case No. 24 in This Court,

(16)

Notice of Motion to Quash

TO THE HONORABLE, THE JUDGES OF THE NINETEENTH JUDICIAL DISTRICT COURT; IN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

And now into this Honorable Court, through his undersigned counsels, comes B. ELTON COX, the defendant in the above entitled and numbered cause, moves to quash the Bill of Information for the following reasons, to-wit:

-1-

That defendant denies that he violated the provision of LSA-R. S. 14:100.1 as charged in the Bill of Information. However, defendant alleges and avers that on the 15th day of December 1961, in protest of racial segregation, defendant, a citizen of the United States, together with others, did in exercise of his rights accorded defendant by and under the First Amendment to the Constitution of the United States of America, peaceably assemble on a public sidewalk within the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana.

-2-

That while the arrest and charge were for "Obstructing Public Passages", there was no commission of such crime (17)

or offense, except for the activities in which the defendant engaged to protest racial segregation, and that the use of the criminal process in such a situation denies and deprives the defendant of his rights, privileges, immunities and liberties guaranteed defendant, a citizen of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

-3-

That LSA-R. S. 14:100.1 is unconstitutional on its face, repugnant to the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States of America, in that, it expressly extends to a bona fide legitimate labor organization the rights accorded and guaranteed citizens of the United States by the First Amendment to the Constitution of the United States of America, while denying and depriving defendant, a member of the Negro race, the same rights.

-4-

That LSA-R. S. 14:100.1 is unconstitutional on its face, in that it denies and deprives defendant, a citizen of the United States of America, of due process and equal protection of the laws, guaranteed the defendant by the Fourteenth Amendment to the Constitution of the United States of America.

-5-

That if said Statute, LSA-R. S. 14:100.1, as amended, does embrace within its terms and meanings, that the defendant, by protesting racial segregation "obstructs public passages", then and in that event said Statute, LSA-R. S. 14:100.1 is unconstitutional, in that it deprives your defendant of his rights, privileges, immunities and/or liberties, without due process of law and denies him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

-6-

That the Bill of Information is insufficient to charge an (18) offense or crime under LSA-R. S. 14:100.1, except violating the rights, privileges, immunities and liberties accorded and guaranteed the defendant, a citizen of the United States, by and under the First and Fourteenth Amendments to the Constitution of the United States of America.

WHEREFORE, your defendant, B. ELTON COX, prays that this Motion to Quash be maintained and that the said Bill of Information as to him, and as far as he is concerned be declared null and void and that he be discharged therefrom.

Attorney for Defendant:

JOHNNIE A. JONES

Robert F. Collins

Nils R. Douglas

Lolis E. Elie

2211 Dryades Street

New Orleans 13, Louisiana

(Signed) BY: JOHNNIE A. JONES

(42)

Opinion Overruling Motion

That on a subsequent day of Court a hearing was had contradictorily with the state on the said motions to Quash and that the court overruled and denied the said motions to Quash to which your defendant then and there objected and reserved a bill of exceptions to the information, the motion to Quash, the States answer to the motion to quash and to the Courts ruling denying the said Motion to Quash, and now your defendant perfects this formal bill of exceptions making a part of same the said information, the motion to Quash, the States answer to the motion to Quash, any evidence offered or testimony heard on the motion to Quash, the Courts ruling on same, and the entire record in these proceedings, and first submitting this their formal bill of exceptions to the District Attorney, now tenders the same to the court and prays that the same be signed and sealed by the judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.
J U D G E

(30)

Motion in Arrest of Judgment

Now INTO COURT, after verdict against B. ELTON Cox, and before sentence the said B. ELTON Cox, through undersigned counsel, and moves the Court here to Arrest Judgment herein and not to pronounce the same because of manifest errors in the record appearing to-wit:

-1-

That at the beginning of the trial (Transcript Page 4) attorney Johnny Jones moved *for the record to show* that Murphy Bell, Attorney, was associated on the case with him.

That the court ordered a minute entry to that effect.

That Attorney Jones also asked for the same record to show that the courtroom was segregated to which request the District Attorney objected and to which the court replied:

"Also let the record show that it has been the practice and custom in the East Baton Rouge Parish Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white *and let the record especially show* that the judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people".

(31)

That on Wednesday, January 31, 1962 (transcript page 278) Johnny Jones renewed his objection to the segregated courtroom, in the following words:

"Your Honor, I want to renew our objection about court being segregated and I want to reserve a formal bill".

To which the court replied:

"Well, I just don't think it makes any difference I don't know if he has got any right to a bill on it or not, but I will let him perfect on it, if he wants to".

Then after some discourse between Mr. Pitcher and Mr. Jones the court said:

"Let it stand as it is".

The above statements are held by counsel to constitute a correct reserving of an objection and the reserving of a Bill of Exceptions to the overruling of the Motion to Desegregate the Courtroom. If not so deemed, then it is our alternative position that the remarks of the court constitutes a part of the record which may properly be presented in review for error in a Motion in Arrest of Judgment.

Thus the record shows on its face that defendant was deprived of rights guaranteed him under the equal protection of the laws and due process of law clauses of the Fourteenth Amendment to the Constitution of the United States.

-2-

That the Bills of Information are insufficient to charge a crime under L. S. A.-R. S. 14:103.1 and 14:100.1.

-3-

That the convictions of defendant for violation of L. S. A.-R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A.-R. S. 14:100.1 denied defendant rights guaranteed to him under the first amendment to the Constitution of the United States.

(32)

That the convictions of defendant for violation of L. S. A.-R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A.-R. S. 14:100.1 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

-5-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that they were enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

-6-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that they were arbitrarily, capriciously and discriminately enforced against persons peacefully exercising their rights of freedom of speech in protest against racial segregation.

-7-

That the statutes under which defendant is convicted and the Bills of Information filed thereunder are unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statutes could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

-8-

That the judgments are contrary to the law and the evidence in that there is no evidence to support a finding of guilt under either statute thus violating defendants rights under the Due Process Clause of the Fourteenth Amendment.

-9-

That the judgments are unconstitutional in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that
(33)

it is constitutionally impossible to charge and convict a defendant for disturbing the peace when the body of the

statute prohibits crowding or congregating" under circumstances such that a breach of the peace *may* be occasioned thereby.

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause, if any he has, why a Motion in Arrest of Judgment should not be granted in these proceedings.

ROBERT F. COLLINS

NILS R. DOUGLAS

LOUIS E. ELIE

2211 Dryades St., N. O. La.

(Signed) By Nils R. Douglas

MURPHY W. BELL

971 South 13th St., B. R., La.

OF COUNSEL:

CARL RACHLIN

280 Broadway

New York, New York

(56)

Opinion on Motion in Arrest of Judgment

The Court after hearing the said Motion in Arrest of Judgment of the defendants, denied and overruled the same, and to such action of the Court, counsel for the defendant then and there objected and reserved a formal bill of exceptions, and now counsel perfects this his formal bill of exceptions to the overruling and denying of the said Motion in Arrest of Judgment and makes a part hereof, the bill of information, the Motion to Quash, any evidence or testimony heard or offered on the trial of these cases on the merits, the Motion in Arrest of Judgment, the Motion For A New Trial, the Courts ruling on the Motion In Arrest Of Judgment, the Courts ruling on the Motion For a New Trial and the entire record in these proceedings and first submitting this his bill of exceptions to the District Attorney, now tenders the same to the court and prays the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided which is done accordingly this 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.
J U D G E

PER CURIAM

With regard to the objection of the accused to the segregated seating in the courtroom, the Court on its own order turned over approximately three-fourths of the seats in the courtroom to members of the colored race leaving approximately one-fourth of the courtroom for members of the white race. Notwithstanding this, counsel urges that this denied the accused a fair trial. The transcript of the record of trial will speak for itself in this regard.

Finally, the wisdom of segregating the races at the time of this trial when racial tension had been occasioned by the accused, whether in pursuit of freedom of speech or not, is beyond question. Indeed, it insured the accused a fair trial and was a step to preserve order in the Court, for which this judge is responsible.

Baton Rouge, Louisiana,
this 10th day of October,
1962.

(signed) Fred A. Blanche, Jr.
Judge, 19th Judicial District Court

(35)

Motion for New Trial

NOW INTO COURT, through undersigned counsel comes B. ELTON COX, the defendant in the above entitled and numbered cause and moves the court that the verdict rendered herein be set aside and a New Trial ordered, for the following reasons:

—1—

That the Bills of Information are insufficient to charge a crime under L. S. A. R. S. 14:103.1 and 14:100.1.

—2—

That the convictions of defendant for violation of L. S. A. R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A. R. S. 14:100.1 denied defendant rights guaranteed to him under the first amendment to the Constitution of the United States.

—3—

That the convictions of defendant for violation of L. S. A. R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A. R. S. 14:100.1 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

—4—

That the courts overruling of defendants objection to the segregated seating in the courtroom to which ruling de-

(36)

endant reserved a formal Bill of Exceptions was error and prejudicial to the defendant in that it denied him the right to a fair trial guaranteed to him by Article I Section 6 of the Constitution of the State of Louisiana. Said error further denied defendant the equal protection of the laws and due process of law guaranteed to him by the first section of the Fourteenth Amendment to the Constitution of the United States.

—5—

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that they were enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

—6—

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that they were arbitrarily, capriciously and discriminately enforced against persons peacefully, exercising their rights of freedom of speech in protest against racial segregation.

—7—

That the statutes under which defendant is convicted and the Bills of Information filed thereunder are unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statutes could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

—8—

That the judgments are contrary to the law and the evidence in that there is no evidence to support a finding of guilt under either statute thus violating defendant's rights under the Due Process Clause of the Fourteenth Amendment.

(37)

—9—

That the judgments are unconstitutional in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that it is constitutionally impossible to charge and convict a defendant for disturbing the peace when the body of the

statute prohibits crowding or congregating "... under circumstances such as a breach of the peace *may* be occasioned thereby".

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause, if any he has, why a New Trial should not be granted in these proceedings.

ROBERT F. COLLINS

NILS R. DOUGLAS

LOUIS E. ELIE

2211 Dryades Street

New Orleans 13, Louisiana

(Signed) By: NILS R. DOUGLAS

MURPHY W. BELL

971 South 13th St., Baton Rouge, La.

OF COUNSEL:

CARL RACHLIN

280 Broadway

New York, New York

(48)

Opinion on Motion for New Trial

The Court, after hearing the said Motion of the defendant for a New Trial, denied and overruled the same, and to such action of the court, counsel for the defendant then and there objected and reserved a formal bill of exceptions and counsel now perfects this his formal bill of exceptions to the overruling of the Motion for a New Trial and makes a part hereof the bill of information, the motion to quash, the Courts ruling overruling the motion to quash and any evidence offered or testimony heard on the trial of the cases on the merits, the motion for a New Trial, the courts ruling on the motion for a New Trial, and the entire record in these proceedings, and first submitting this his bill of exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.
JUDGE

Motions in Case No. 49 in This Court

(22)

Notice of Motion to Quash

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

AND NOW into this Honorable Court, through his undersigned counsels, comes B. Elton Cox, the defendant in the above entitled and numbered cause, moves to quash the Bill of Information for the following reasons, to-wit:

1.

That the defendant alleges and avers that he did on December 15, 1961, in protest of racial segregation, engage in a demonstration by assembling on the West side of St. Louis Street, across the street from the Courthouse Building of East Baton Rouge Parish, State of Louisiana, but denies that he engaged in any activity whatsoever with the intent of violating LSA-R. S. 14:401 as charged in the Bill of Information.

(23)

2.

That LSA-R. S. 14:401 is sufficiently vague and indefinite to be unconstitutional on its face, in that, it does not prescribe the distance or a limit from the Courthouse Building where the defendant or any other citizen of the United States of America can lawfully assemble in exercise of the rights accorded the defendant, or any other citizen of the United States of America, by the First Amendment to the Constitution of the United States of America.

3.

That LSA-R. S. 14:401 is so vague and indefinite in its construction so as to deprive defendant of his rights, privileges, immunities and/or liberties without due process of law and denies him the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

4.

That the said Bill of Information does not allege any unlawful act or acts committed by the defendant, except violating the rights of freedom of speech, press, assembly and petition accorded the defendant, a citizen of the United States, by the First Amendment to the Constitution of the United States of America.

5.

That while the arrest and charge were for demonstrating with the intent to interfere with, obstruct and impede the administration of justice, and with the intent of influencing a Judge, witnesses and Court Officers, in the discharge of their duties, there was no such activity or activities, except the activity or activities in which the defendant engaged to protest racial segregation, and that the use of the criminal process in such a situation denies and deprives the defendant, a citizen of the United States, of his rights, privileges immunities and liberties guaranteed defendant by the Fourteenth Amendment to the Constitution of the United States of America.

(24)

6.

That if said Statute LSA-R. S. 14:401, as amended, does embrace within its terms and meanings, that defendant, by engaging in a demonstration in protest of racial segregation interferes with, obstructs, impedes the administration of justice, and influences Judges, witnesses and Court officers in the discharge of their duties, then and in that event said Statute, LSA-R. S. 14:401, is unconstitutional in that it deprives your defendant of his rights, privileges, immunities and/or liberties without due process of law and denies him the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

7.

That the Bill of Information is insufficient to charge an offense or crime under LSA-R. S. 14:401, except violating the rights, privileges, immunities and liberties accorded and guaranteed the defendant, a citizen of the United States, by and under the First and Fourteenth Amendments to the Constitution of the United States of America.

WHEREFORE, your defendant, B. Elton Cox, prays that this Motion to Quash be maintained and that the said Bill of Information as to him, and as far as he is concerned be declared null and void and that he be discharged therefrom.

Attorneys for Defendant:

JOHNNIE A. JONES
ROBERT F. COLLINS
NILS R. DOUGLAS
LOUIS E. ELIE
2211 Dryades Street
New Orleans 13, Louisiana

/s/ By: Johnnie A. Jones

(26)

Opinion on Motion to Quash

That on a subsequent day of Court a hearing was had contradictorily with the state on said motion to Quash and that the court overruled and denied the said motion to Quash to which your defendant then and there objected and reserved a bill of exceptions to the information, the motion to Quash, the States answer to the motion to quash and to the Courts ruling denying the said Motion to Quash, and now your defendant perfects this formal bill of exceptions making a part of same the said information, the motion to Quash, the States answer to the motion to Quash, any evidence offered or testimony heard on the motion to Quash, the Courts ruling on same, and the entire record in these proceedings, and first submitting this his formal bill of exceptions to the District Attorney, now tenders the same to the court

and prays that the same be signed and sealed by the judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 31st day of *January* 1963.

(Signed) Fred A. Blanche, Jr.
JUDGE

(13)

Notice of Motion in Arrest of Judgment

Now into Court, after verdict against B. Elton Cox, and before sentence comes the said B. Elton Cox, through undersigned counsel, and moves the Court here to Arrest Judgment herein and not to pronounce the same because of manifest errors in the record appearing to-wit:

1.

That at the beginning of the trial (Transcript Page 4) attorney Johnny Jones moved for the record to show that Murphy Bell, Attorney, was associated on the case with him. That the court ordered a minute entry to that effect. That Attorney Jones also asked for the same record to show that the courtroom was segregated to which request the District Attorney objected and to which the court replied:

"Also let the record show that it has been the practice and custom in the East Baton Rouge Parish Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white and let the record especially show that the

(14)

judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people". (italics ours)

That on Wednesday, January 31, 1962 (transcript page 278) Johnny Jones renewed his objection to the segregated courtroom, in the following words:

"Your Honor, I want to renew our objection about court being segregated and I want to reserve a formal bill".

To which the court replied:

"Well, I just don't think it makes any difference I don't know if he has got any right to a bill on it or not, but I will let him perfect on it, if he wants to".

Then after some discourse between Mr. Pitcher and Mr. Jones the court said:

"Let it stand as it is".

The above statements are held by counsel to constitute a correct reserving of an objection and reserving of a Bill of Exceptions to the overruling of the Motion to Desegregate the Courtroom. If not so deemed, then it is our alternative position that the remarks of the court constitutes a part of the record which may properly be presented in review for error in a Motion in Arrest of Judgment.

Thus the record shows on its face that defendant was deprived of rights guaranteed him under the equal protection of the laws and due process of law clauses of the Fourteenth Amendment to the Constitution of the United States.

2.

That the Bills of Information are insufficient to charge a crime under L. S. A.-R. S. 14:401.

(15)

3.

That the convictions of defendant for violation of L. S. A.-R. S. 14:401 denied defendant rights guaranteed to him under the first amendment to the Constitution of the United States.

4.

That the convictions of defendant for violation of L. S. A.-R. S. 14:401 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

5.

That the statute under which the defendant was convicted is unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that it was enacted for the specific purpose and intent to implement and further the state's policy of enforced segregation of races.

6.

That the statute under which the defendant was convicted is unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that they were arbitrarily, capriciously and discriminately enforced against persons peacefully exercising their rights of freedom of speech in protest against racial segregation.

7.

That the statute under which defendant is convicted and the Bill of Information filed thereunder is unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statute could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

8.

That the judgment is contrary to the law and the evidence in that there is no evidence to support a finding of guilt under said statute thus violating defendant's rights (16) under the Due Process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America.

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause,

if any he has, why a Motion in Arrest of Judgment should
not be granted in these proceedings.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOUIS E. ELIE
2211 Dryades Street
New Orleans 13, Louisiana

(Signed) By: Nils R. Douglas

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

Of Counsel:

CARL RACHLIN, Esq.
280 Broadway
New York, New York

(37)

Opinion on Motion in Arrest of Judgment

The Court, after due consideration of the Motion in Arrest of Judgment filed and submitted by counsel for accused, denied and overruled same. To which ruling of the Court, counsel for accused excepted and reserved a formal bill of exceptions, making a part of the bill, the entire record of these proceedings and the motion filed. Defendant first submitting this his bill of exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this *31st* day of *January* 1963.

(Signed) Fred A. Blanche, Jr.
JUDGE

(18)

Notice of Motion for New Trial

Now INTO COURT, through undersigned counsel comes B. Elton Cox, the defendant in the above entitled and numbered cause and moves the court that the verdict rendered herein be set aside and a New Trial ordered, for the following reasons:

—1—

That the Bill of Information is insufficient to charge a crime under L. S. A.-R. S. 14:401.

—2—

That the conviction of defendant for violation of L. S. A.-R. S. 14:401 denied defendant rights guaranteed to him under the First amendment to the Constitution of the United States.

—3—

That the conviction of defendant for violation of L. S. A.-R. S. 14:401 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

—4—

That the courts overruling of defendant's objection to the segregated seating in the courtroom to which ruling defendant reserved a formal bill of Exceptions was error and prejudicial to the defendant in that it denied him the right to a fair trial guaranteed to him by Article I Section 6 of the Constitution of the State of Louisiana. Said error further denied defendant the equal protection of the laws and due process of law guaranteed to him by the First Section (19)

of the Fourteenth Amendment to the Constitution of the United States.

—5—

That the statute under which the defendant was convicted is unconstitutional and in contravention of the Fourteenth

Amendment of the Constitution of the United States in that it was enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

—6—

That the statute under which the defendant was convicted is unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that it was arbitrarily, capriciously and discriminately enforced against persons peacefully, exercising their rights of freedom of speech in protest against racial segregation.

—7—

That the statute under which defendant is convicted and the Bill of Information filed thereunder are unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statute could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

—8—

That the judgment is contrary to the law and the evidence in that there is no evidence to support a finding of guilt under said statute thus violating defendant's rights under the Due Process Clause of the Fourteenth Amendment.

—9—

That the Court erred to the prejudice of the accused by denying the Motion to Quash.

—10—

That the Court erred to the prejudice of the accused by denying the Application for a Bill of Particulars.

(20)

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause; if any he has, why a New Trial should not be granted in these proceedings.

ROBERT F. COLLINS

LILS R. DOUGLAS

LOLIS R. ELIE

(Signed) By: Nils R. Douglas

MURPHY W. BELL

971 South 13th Street

Baton Rouge, Louisiana

Of Counsel:

CARL RACHLIN

New York, New York

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority personally came and appeared:

NILS R. DOUGLAS

who after first being duly sworn did depose and say that he is the attorney in the above matter and all the allegations herein contained are true and correct.

(Signed) Nils R. Douglas
NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 29 DAY

OF JANUARY, 1963.

(Signed) Murphy W. Bell
NOTARY PUBLIC

(31)

Opinion on Motion for New Trial

The Court, after hearing the said Motion of the defendant for a New Trial, denied and overruled the same, and to such action of the court, counsel for the defendant then and there objected and reserved a formal bill of exceptions and counsel now perfects this his formal bill of exceptions to the overruling of the Motion for a New Trial and makes a part hereof the bill of information, the motion to quash, the Courts ruling overruling the motion to quash and any evidence offered or testimony heard on the trial of the case on the merits, the motion for a New Trial, the courts ruling on the motion for a New Trial and the entire record in these proceedings, and first submitting this his bill of exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 31st day of January 1963.

(Signed) Fred A. Blanche, Jr.
JUDGE

(4)

Excerpts From Transcript of Trial

Mr. Jones: Your Honor, I would like to move to associate attorney Murphy Bell on the case with me.

The Court: All right.

Mr. Jones: I would like for the record to show that he is now being associated on the case.

The Court: Show a minute entry to that effect.

Mr. Pitcher: No objection.

Mr. Jones: I would also like for the record to show that

(5)

this case is one where the defendant is being charged for the protest of racial segregation and that within the Court-house itself that the defendant is being tried in that racial segregation is being practiced and that there are interested parties, citizens on the outside of court waiting—

Mr. Pitcher: I object to the remarks of counsel—

Mr. Jones: —who are interested in the case and that there are seats vacant in the court which are being reserved for the whites and that the Negro citizens who are interested in the case and the outcome of the case are not permitted to utilize these seats. I would like for that to be made a part of the record.

The Court: Also, let the record show that it has been the practice and custom in the East Baton Rouge Parish

(6)

Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white, and let the record especially show that the judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people.

Mr. Pitcher: If Your Honor Please, while Your Honor is well aware of what is going on, I am sure that the Supreme Court of the United States will not be, and for that reason, I ask that Your Honor appoint a Deputy Sheriff to personally count the number of people in this room to be able to testify as to the number of people present in

(7)

court and the seats available and the number of white people present. I think the State is entitled to that.

The Court: All right.

(A Deputy Sheriff was so appointed by the Court at this time and ordered to count the people in the courtroom while the proceedings were going on.)

Mr. Jones: If the count is to be made, Your Honor, we would also like to make a count of those who are waiting on the outside.

The Court: Count them, too.

Mr. Jones: And count the number of seats that are still available.

The Court: All right.

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**Testimony of Thomas Terrell Edwards, Captain in
Charge of Jail, and Herman Thompson**

By the Court:

Q. In response to a request of the Court did you count the number of colored people sitting in the courtroom at the time court opened on, what day was that—Monday?

A. Day before yesterday.

Mr. Jones: Monday, the twenty-ninth.

Q. Did you do that? A. Yes, sir, I did.

Q. And how many people were sitting in here? A. There was 127 colored and 8 whites in the courtroom behind the rail.

Q. Behind the rail. A. At the first count I made. Now, I made two, If Your Honor remembers. The second count there was the same number of colored, 127, and there were 14 whites.

Q. How much later was that? A. Oh, about two hours, if I recall correctly.

Q. When court opened there were 127 colored and 8 (341)

whites, is that correct? A. Yes, sir.

Q. And approximately how many seats were reserved by the Court for whites? A. Forty-two.

Q. How many colored were on the outside? A. Eighty-eight.

Q. Eighty-eight? A. Yes, sir.

By Mr. Jones:

Q. Would they be waiting to get in, sir? A. None of them indicated that they wanted to get in. They were standing in the hall is all I could tell.

By the Court:

Q. Was that at the same time, because it looked like to me that there were more than eighty-eight. A. At the time I counted, sir, there were just eighty-eight. Now, I was told—

Q. How much later was that than when I first told you—when we opened Court, how much longer after that did you go out and count? A. Well, I made the second count in the courtroom and then I went outside and made a count, and I believe it was approximately two hours between the two counts. I am guessing at that time. At the time I really don't recall, sir.

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Q. At the time that the court was opened, wasn't there more out there in the hall than there were at the time you took the count? A. I don't know, sir.

Q. I was told there were. A. I was told that at several times in the afternoon there 200 or 250, but I didn't see them. I didn't go out there.

Q. Do you know anyone who could make an estimate to that effect among the officers? A. Captain Henderson or Captain Thompson could.

The Court: All right, is that all?

By Mr. Jones:

Q. Did you reserve any seats in the courtroom for the white people? A. I didn't reserve any seats for anyone.

Q. Was there any seats in the courtroom reserved for the whites then? A. No, sir, His Honor—

The Court: I will answer that from the bench. I reserved one-half of what was formerly the white

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section for white people and I gave the other half of it to the colored people.

WITNESS EXCUSED

The Court: Captain Thompson.

HERMAN A. THOMPSON, called as a witness by the Court, being first duly sworn, testified as follows:

Direct examination by the Court:

Q. How many colored people were out in the hall at the time court started on Monday? A. There were two hundred or better, Judge.

Q. Is that your estimate? A. Yes, sir, that was why we called the fire marshals.

Q. Could it have been as many as 250? A. It could very easily.

Q. Could it have been more than 250? A. They were solid from this courtroom door about four foot out from the door down to the Grand Jury room, and there were some of them sitting on benches down the hall.

Q. Did you clear a corridor between them for a passage-
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way to the door here? A. We were having difficulty. That is why we called the fire marshals in order to enforce the fire laws.

Q. How long did a crowd of that size remain outside? A. I would say for at least two hours.

By Mr. Pitcher:

Q. Captain, at the time, there were 250 people in the hall, was that the same time that Captain Edwards has said there were 127 in the courtroom? A. That is correct, sir.

Q. And there were only eight white people in it at that time? A. That is correct, sir.

Mr. Pitcher: That's all. Your witness.

A. (Directed to the Court) Do you want what you asked for yesterday?

By the Court:

Q. What is that? A. You asked how many vacant seats there were.

Q. What time was it? A. At 11:15 A. M. yesterday you asked me and there were twenty vacant seats and only five waiting outside, and out of the five we asked—one was Reverend Johnson and he said he didn't care to come in.

SEP. 25 1964

JOHN F. DAVIS, CLERK

Numbers 24 and 49

**In the
Supreme Court of the United States**

OCTOBER TERM, 1964

B. ELTON COX,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Appeal from the Supreme Court of Louisiana

CONSOLIDATED BRIEF FOR APPELLEE

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Numbers 24 and 49

**In the
Supreme Court of the United States**

OCTOBER TERM, 1964

B. ELTON COX,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Appeal from the Supreme Court of Louisiana
CONSOLIDATED BRIEF FOR APPELLEE

STATEMENT OF THE CASE

On the morning of December 15, 1961, the defendant, Cox, as the unquestioned leader, with a crowd of Negroes variously estimated at 1500 to 3800 (we think 2000 persons is a fair conclusion to be derived from the evidence) assembled in the heart of Baton Rouge in the vicinity of the Old State Capitol building a short distance from the Parish Courthouse. Shortly before noon Cox led these demonstrators in an orderly fashion to the vicinity of the Parish Courthouse, where the Sheriff, Chief of Police and ~~a substantial contingent of~~ approximately eighty law enforcement officials had gathered in preparation for the march upon the courthouse. Twenty-three Negroes had been arrested the day before for demonstrations in Baton Rouge, and ~~they were at that time~~ imprisoned in the Parish

Jail located in the upper floor of the courthouse building.

Arriving near the courthouse in the vanguard of the marchers, Cox was confronted by the Sheriff and Chief of Police and was asked what his intentions were. He answered to them that the marchers were demonstrating against segregation and the activities would be confined to a few songs, a speech, and peaceful demonstrations, the whole of which would consume only a few minutes. The Sheriff then advised Cox to confine his demonstration to the time mentioned and no more.

The marchers then occupied the sidewalk across the street from the western entrance of the courthouse. ~~The testimony and motion pictures in evidence unmistakably established the fact that the~~ marchers completely occupied the entire sidewalk for the greater portion of a block across from the courthouse in such a manner that no passage was possible thereon. All the entrances to many offices facing that sidewalk were blocked, the occupants were unable to leave. In the words of one witness the demonstrators were "tightly packed" along most of the sidewalk. Unmistakenly, too, these activities resulted in an obstruction of the street separating the sidewalk occupied by the marchers and the courthouse. Because of this, it was necessary to re-route traffic away from that street. Meanwhile, several hundred white persons had gathered in front of the courthouse across the street from the demonstrators.

There were silent prayers and a display of signs which the demonstrators had kept hidden in their clothing. These signs being identical to the ones used by the demonstrators who had been arrested the day before. All of these activities took place under Cox's command and according to instructions he issued during each phase of the demonstration.

Cox then made a speech which was in effect "a protest against illegal arrest of some of their members". He admonished the multitude of demonstrators to remain peaceful and generally built them up emotionally for further sit-in demonstrations which he instructed them to conduct at lunch counters in the business district of the city upon leaving the scene.

The crowd then sang songs, answered by the prisoners in the jail and this in turn evoked loud and frenzied outbursts and "wild yells" from the demonstrators assembled on the sidewalks.

Whereupon "grumbling" was heard among the white people, a feeling of "impending excitement" was apparent to all and a fear arose among those present that they were about to have a riot. Several witnesses testified that in their life time no demonstration of this nature or scope had ever taken place in Baton Rouge. As one witness expressed it the crowd was "rumbling". In the large crowd "tension was running high". Some of the witnesses felt the demonstrators were about to storm the courthouse to get the prisoners who had been arrested the day before.

At this time the prisoners in jail were hollering,

screaming, beating on walls trying to attract the attention of the demonstrators across the street.

The Sheriff, feeling that a riot was imminent, and fearing the crowd would get out of hand instructed Cox by means of a loud speaker so that all present could hear to "move on" and "break it up," that he had had his time. Cox then instructed the demonstrators by saying "Don't move" and by his actions and demeanor defied the Sheriff's orders. The demonstrators and Cox stood immobile. They refused to move on.

The police then dispersed the crowd with tear gas and Cox was arrested the next day. (See finding of facts in opinion of Supreme Court of Louisiana 244 La. 1087, 156 So.2d at Pages 451 and 452.)

These findings of facts are respectfully submitted and are supported by the transcript herein.

ARGUMENT

Peaceful demonstration is not protected under the Fourteenth and First Amendments to the United States Constitution without regard to place of demonstration.

"The priceless character of the First Amendment freedoms cannot be gainsaid but it does not follow that they are absolutes, immune from necessary state action, reasonably designed for the protection of society." *Edwards v. South Carolina* 372 US 239, 83 S.Ct. 680, 9 Law Ed.2d 678. With reference to these First Amendment rights such factors as time, place and manner are of considerable importance. A consideration of these factors is essential as they have a direct bearing affecting the rights of others. It has been said

by this court that "where clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace or order, appears, the power of the state to prevent or punish is obvious." *Cantwell v. Connecticut* 310 US 308, 60 S.Ct. 905.

This Honorable Court has also said "Municipal authorities, as trustees of the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which streets are dedicated. So long as legislation to this end does not bridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrians to travel who did not accept a tendered leaflet; nor does the guarantee of the freedom of speech or the press deprive a municipality of power to enact regulations against throwing literature or broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion." *Schneider v. State* 308 US 147, 160, 60 S. Ct. 146, 84 Law Ed. 155 (1939).

This court has likewise said that freedom of speech does not give one the right to talk in any manner at any time at any place that he may choose. *Kovax v. Cooper* 336 U.S. 77, 69 S.Ct. 448, 93 Law Ed. 513 (1949). Also this Honorable Court has said that freedom of speech does not give one the right to say whatever he wishes. *Feiner v. New York*, 340 US 315, 71 S.Ct. 303, 95 Law Ed. 267. The South Carolina demonstration cases, *Edward v. South Carolina*, 372 US 229; *Fields v. South Carolina* 375 US 44; *Henry v. City of Rock Hill*, cited by appellant in his brief are distinguishable from the case at bar in two significant aspects. First, in *Edwards*, this Honorable Court said "these petitioners were convicted of an offense so generalized as to be, in the words of the South Carolina Supreme Court, 'not susceptible of exact definition.'" 372 US at Page 236, 83 S.Ct. at Page 684; and secondly, in *Edwards*, this Honorable Court said "There was no obstruction of pedestrian or vehicular traffic within the state house grounds. No vehicle was prevented from entering or leaving the horseshoe area . . . and there was no impediment of pedestrian traffic." 372 US at Pages 231, 232. Again in *Henry v. City of Rock Hill*, one of the South Carolina demonstration cases relied upon by appellant, this Honorable Court said "Here, as in *Edwards* and *Fields*, petitioners 'were convicted of an offense so generalized as to be, in the words of the South Carolina Supreme Court, 'not susceptible of exact definition'.'" 84 S.Ct. at Page 1043. Again this court said in *Henry v. City of Rock Hill* "Although

white onlookers assembled, no violence or threat of violence occurred and traffic was not disturbed." 84 S.Ct. at Page 1043.

The Louisiana statutes LSA-R.S. 14:100.1 Obstructing Public passages and LSA-R.S. 14:103.1 Disturbing the Peace by Crowding or Congregating with Others with the Intent to Provoke a Breach of the Peace or Under Circumstances Such That a Breach of the Peace May Be Occasioned Thereby In or Upon Public Streets, or Upon Public Side Walks . . . And Who Fail or Refuse To Disperse and Move On When Ordered To Do So By Any Law Enforcement Officer were Acts obviously passed by the Louisiana Legislature with the view of regulating demonstrations as to place so that the rights of others in society would not be infringed upon. The other statute involved LSA-R.S. 14:401, Demonstrations In or Near Building Housing a Court or Occupied as Residence by Judge, Juror, Witness or Court Officer has its birth in the assurance to all citizens, including these demonstrators, of a free and impartial judiciary.

In order to further sustain his contention herein, appellant relies upon the case of *Terminiello v. City of Chicago*, 337 US 1, 69 S.Ct. 894. The Terminiello case is readily distinguishable from the case at bar in that it involved a breach of the peace resulting from an obnoxious speech made by Terminiello. The question therein was whether or not the language used by Terminiello was composed of derisive fighting words which carried outside the scope of the consti-

tutional guarantees. Whereas the question in this case involves the place or site of the demonstration. In *Edwards v. South Carolina* this court announced that no infringement upon constitutional guarantees would be involved "if for example, petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the period during which the state house grounds were open to the public. . . ." This is the precise nature of the regulation which these contested statutes invoke. The reasons which support such enactments are obvious and have been approved by this Honorable Court. *Schneider v. State*, 308 US 147, 160, 60 S.Ct. 146, 84 Law Ed. 155 (1939). The activity of appellant herein bears no necessary relationship to the freedom to speak or assembly. These demonstrators, like other citizens, must confine their exercise of constitutional freedoms within lawfully regulated limits of those freedoms. Public streets and public sidewalks were not designed nor built nor are they maintained and perpetuated for the purpose of accommodating public demonstrations and gatherings which have the known and willful result of completely defeating the purposes for which they were designed, built and are maintained.

These Louisiana statutes involved herein are designed to maintain good order in society and to insure a free and impartial judiciary. The contention that their respective applications might incidentally infringe upon the First Amendment freedoms of speech and assembly does nothing more than to bespeak the

truth that these First Amendment freedoms are not absolute. The contention by appellant that he was punished for peaceful participation in demonstrations protected under the Fourteenth and First Amendments to the United States Constitution if sustained by this court would obliterate the factor of place as to where assembly may meet or a demonstration held. The simple answer to appellant's contention is that the Fourteenth and First Amendments do not protect a demonstration, even peaceful, held on the public streets and public sidewalks whereby pedestrian and vehicular traffic is obstructed. *Edwards v. South Carolina* 372 US 229; *Henry v. City of Rock Hill* 376 US 776; *Schneider v. State*, 308 US 147, 160, 60 S.Ct. 146, 84 Law Ed. 155.

LSA-R.S. 14:103.1 punishing breach of the peace is not unconstitutional on its face under the due process clause of the Fourteenth Amendment.

LSA-R.S. 14:103.1 provides:

"Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby. . . commits certain acts shall be guilty of disturbing the peace." The Louisiana Supreme Court herein found that the words "breach of the peace" had the identical meaning with the words "disturbing the peace" and that in Louisiana this meant "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." *Town of Ponchatoula v. Bates*, 173 La. 824, 138 So. 851. The Louisiana Supreme Court

found that because the words of the statute have a fixed, definite and commonly understood meaning and a meaning ascribed to them by this court that they were not ambiguous nor was it objectionable that the statute seeks to prescribe conduct which will result in a disturbance of the peace. That the statute may lawfully have the prevention of a disturbance as its object as well as punishing an actual disturbance and therefore the accused had adequate notice of the proscribed conduct. Since the state court has held that petitioner's conduct constituted breach of the peace under the state law, this Honorable Court may accept their decision as binding upon it to that extent. *Edwards v. South Carolina*, 83 S.Ct. 683, 372 U.S. 235.

Obstructing Public Passages—LSA-R.S. 14:100.1 it is submitted, is a narrowly drawn regulatory statute within the meaning of *Edwards v. South Carolina*. The bill of information tracted the language of this precisely and narrowly drawn statute. The Louisiana Supreme Court found that the accusation herein informed the accused of the charges against him so that he may properly defend himself; that the trial judge was properly informed by the bill of information of what the case involved so that he as he presided and called upon to make rulings therein was able to intelligently do so and that the bill of information was sufficient to sustain the plea of former or double jeopardy which are the requirements necessary to constitute the constitutional sufficiency of a bill of information. *State v. Scheler*, 243 La. 443, 144 So.2d

389 (1962). With reference to the lack of evidence showing willful obstruction, the Louisiana Supreme Court found that there was ample evidence to sustain his conviction. The Louisiana Supreme Court also pointed out that it is limited in the scope of its review in criminal matters by Article 7, Section 10 of the Constitution to questions of law only which in effect means that although the court can look into the record to determine the lack of some evidence to sustain the conviction, no matter how little, it cannot pass upon the sufficiency thereof, for this comes within the exclusive providence in criminal cases of the trial court judge or jury. *State v. Copeland* 242 La. 199, 135 So.2d 271, (1961).

Further appellant relies upon the case of *Smith v. California*, 361 U.S. 147 (1959) wherein the defendant was convicted under a statute which punished solely the possession of obscene books without requiring knowledge of their contents. This court, it is true, reversed, holding that the statute lacked an element of intent, acted as a restraint of the free circulation of books. Appellant contends that the improper definition of willful "permits the authorities to prevent all street demonstrations, and thus act as a damper on such street demonstrations." The simple answer to this is that the statute and the bill of information charges that this accused did, "willfully obstruct the free, convenience and normal use of a public sidewalk. . . ." Willful, of course, means knowingly which readily distinguishes this case from the Smith case where knowledge was lacking.

Demonstration Near a Courthouse—LSA-R.S. 14:-
401 provides:

“Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more than five thousand dollars or imprisoned not more than one year, or both.”

Nothing in this section shall interfere with or prevent the exercise by any court of the State of Louisiana of its power to punish for contempt.”

This act was passed in 1950 by the Louisiana Legislature and is almost a duplicate of a similar act passed by Congress in 1949. See 18 U.S.C.A. 1507. As pointed out in the opinion of the Louisiana Supreme Court this act was passed as a result of the disgraceful picketing and demonstrations in and around Federal buildings housing Federal courtrooms and particularly with reference to the trial being presided over by Judge Harold R. Medina in the year of 1949 involving the trial of ten of the top leaders of the Communist party in the United States wherein picketing in and around the Federal building housing the Federal courtroom was carried on. This state act was

passed prior to the 1954 school segregation case of *Topeka v. Brown* and was not passed for the specific purpose and intent to implement and further the state's policy of enforced segregation of races as contended by appellant herein. This act, of course, applies indiscriminately regardless of the membership of the group picketing or demonstrating. Although there is no jurisprudence relating to this particular statute or similar statutes, appellant contends that the jurisprudence concerning the sanction of contempt for protest against actions taken by courts in cases pending before them should be applicable herein and that the criterion of the clear and present danger to the administration of justice should apply herein. *Wood v. Georgia* 37 US 375; *Craig v. Horny* 331 US 367; *Penacamp v. Florida* 328 US 331; *Bridges v. California* 314 US 252. It is further contended by appellant that the Louisiana Supreme Court did not apply the foregoing test or standard of clear and present danger required by this court under the Fourteenth Amendment and that the Louisiana Supreme Court was content to decide the case simply by striking a balance between the two competing interests, that is, freedom of speech and a fair and impartial administration of justice in favor of the latter with little regard to the actual effect of the protest upon the administration of justice. 158 So.2d 175.

First of all, it may be said that the cases relied upon by appellant all dealt with publications. Freedom of speech and freedom of the press per se were involved. While the courts have recognized that picket-

ing is an exercise of a form of free speech and is protected by constitutional rights. This sweeping analogy as first enunciated by the United States Supreme Court in the case of *Thornhill v. State of Alabama*, 310 US 88, 60 S.Ct. 736, 84 Law Ed. 1093, has since been greatly refined and restricted. For example, this court in *Hughes v. Superior Court of the State of California*, 339 US 460, 70 S.Ct. 718, 721, 94 Law Ed. 985, pointed out that "... while picketing is a mode of communication, it is inseparately something more and different ... since it involves patrol of a particular locality and since the very presence of a picket line made this action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. . . The very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. . . It has been aptly recognized that picketing, not being the equivalent, as a matter of fact, is not its inevitable legal equivalent." Regardless of what appellant contends, one of the announced purposes in congregating "en masse" right across the street from the courthouse which housed the District Courts of East Baton Rouge Parish was to protest against the "illegal arrest" of some of their members. Transcript Page 37, 39, 46. Appellant himself told the authorities, when questioned as to his purpose for the demonstration, that it was to protest the illegal arrest of some of their people who were being held in jail. At that time he was informed the court should determine the legality of the arrest. Transcript Page 253. The question of the legality of an arrest is for the

courts. Appellant by his own declaration, had taken it upon himself to determine that these arrests were illegal and his demonstration was brought to the courthouse building where the District Courts are housed, to the forum where he knew this question would be presented. During this demonstration the Sheriff, sensing the seriousness of this explosive situation, by means of a loudspeaker, ordered the demonstrators to move on. However, Cox, and, on his instructions, the group openly defied this command and continued the "fiery" and "frenzied" demonstration, in which they were still being joined by the twenty-three people incarcerated in the building, despite a second admonition by the Sheriff. It was only by the use of tear gas that the Sheriff, his deputies and other law enforcement officers (about eighty in all) were able to disperse the group. The trial judge who presided over these proceedings against Cox and who, with one or more of the other three judges having chambers in this building in which they had been holding court since early in September, would eventually be required to determine in a proper trial whether the incarcerated people had been "illegally" arrested—stated in his reasons for judgment that he was "so fearful" and apprehensive of the outcome of this demonstration by such a large mass of people in the area of the courtrooms, he was, in fact, intimidated, and upon learning the demonstration was eminent, closed his office and left the building.

With reference to the above recitation, the Louisiana Supreme Court stated "These facts belie de-

fense argument that by his conviction Cox and his followers were denied the right to "peacefully assemble as guaranteed by the First and Fourteenth Amendments to the Federal Constitution." The Louisiana statute with which we are concerned is very narrowly and precisely drawn, in that it requires more in order to constitute its violation than the requirements to constitute the usual contempt of court cases cited by appellant. For example, besides the requirement that one intend to interfere with, obstruct or impede the administration of justice or intend to influence judge, juror, witness or court official in the discharge of their duties, the statute requires additionally that this be done through the mode of picketing or parading and also additionally that it be done in or near a building housing a court of the State of Louisiana or in or near a building or residence occupied or used by such judge, juror, witness or court official. It would seem that the requirements of a clear and present danger doctrine as set forth in the contempt of court cases cited by appellant are included in the definition of LSA-R.S. 14:401. The physical presence en masse of those who wish to impart their views to another is much more effective and the result of having it heard so that persuasion or influence results directly therefrom is much greater than would be of the views of one not present which appears in some publication of general circulation. Greater effectiveness in persuasion and influence arises from the prescriptions as set out in the Louisiana statute than would be from an incident in a general publication. Therein lies the differ-

ence in the statute with which we are concerned and in the contempt of court cases involving discourses in publications of general circulation.

Mr. Justice Holmes wrote; "The theory of our (judicial) system is that the conclusion to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether a private talk or public print." *Addison v. Colorado* 205 U.S. 454, 462, 27 S.Ct. 556, 558, 51 Law Ed. 879; *Wood v. Georgia* 370 U.S. 396, 82 S. Ct. 1376. "The very word 'trial' connotes decisions on the evidence and arguments properly advanced in open court. Legal trials are not like elections, to be won through the use of the meeting hall, the radio, and the newspaper. . . . We must therefore turn to the particular utterances here in question and the circumstances of their publication to determine to what extent the substantial evil of unfair administration of justice was a likely consequence, and whether the degree of likelihood was sufficient to justify some punishment." *Bridges v. California* 314 US 271, 62 S.Ct. 197; 37 US 396, 82 S.Ct. 1376.

"In order to show intent, evidence is admissible of similar acts, independent of the act charged as a crime in the indictment, for although intent is a question of fact, it need not be proven as a fact, it may be inferred from the circumstances of the transaction." LSA-R.S. 15:445.

Appellant contends further that his conviction under R.S. 14:401 deprived him of due process of law

because there was no evidence upon which the conviction could be based and particularly that there was a total absence of evidence to prove an intent to obstruct justice or to influence a court official which is required under the Louisiana statute. Intent is generally inferred from the commission of the act. *State v. Howard*, 1927, 162 La. 719, 111 So. 72. Intent may be inferred from facts and circumstances surrounding the act. *State v. Leonard*, 1927, 162 La. 357, 110 So. 557; *State v. Garner*, 1961, 241 La. 275, 128 So.2d 655. In *State v. Daniels*, 236 La. 998, 109 So.2d 896 (1959) relied upon by appellant, defendant, a convict, who had struck a prison guard, was charged with the crime of "Public Intimidation", using force upon a public officer "with the intent to influence his conduct in relation to his position, employment or duty." LSA-R.S. 14:122. It is true that the Louisiana Supreme Court reversed the conviction on the ground that merely to have struck the guard was enough to show the required intent. The court noted that "this prosecuting witness on cross-examination candidly admitted that the defendant did not strike him to induce him to do or not to do anything." 109 So.2d 899. The Court found the defendant's actions in the Daniels case to be one of a compulsory nature without any specific intent or specific desire to influence the conduct of the official he struck as was required by the statute. The Louisiana Supreme Court said "The instantaneous and angered blow by defendant herein responsive to the guard's shove, does not by itself reliably indicate the requisite specific intent to commit

the serious crime with which defendant is charged." 109 So.2d 900. The court further stated that "the color of the act determines the complexion of the intent only in those situations where common experience has found a reliable correlation between a particular act and a corresponding intent." 109 So.2d 900. An illustration of the foregoing rule was presented in *State v. Garner*, 1961, 241 La. 275, 128 So. 2d 655, wherein Louisiana Supreme Court found that evidence establishing that the defendant had tried to climb over a bar in a tavern with a drawn knife to get at the bartender was sufficient to establish his intent to commit manslaughter.

It is submitted that the congregating and demonstrating en masse of approximately fifteen hundred people right across the street from the courthouse who came there with the avowed purpose of protesting the "illegal arrest" of some twenty-three of their members the previous day where these twenty-three members were housed in the Parish Jail in the courthouse and where all of the judges, courts and court officials were housed and therein have a shouting and yelling communication with the prisoners up in the jail are acts and circumstances from which the trier of the facts could infer the intent therein to interfere with, obstruct or impede the administration of justice and with the intent of influencing any judge, juror, witness or court official in the discharge of their duties.

The purpose of speech is to persuade or influence, when done through picketing or demonstrating in large groups it is made more emphatic with the hope of a

more effective resulting persuasion and influencing. Common experiences dictates that there is a reliable correlation between the facts of this case and the necessary intent set forth in the statute. Section 9 of Article 19 of the Louisiana Constitution declares "The jury in all criminal cases shall be the judges of the law and of the facts on the question of guilt or innocence, having been charged as to the law applicable to the case by the presiding judge," Under Article 7, Section 10 of the Louisiana Constitution in criminal cases the appellate courts are without jurisdiction over the sufficiency of evidence although that court does have jurisdiction as a matter of law, should there be a total absence of proof as to any essential element of the crime charged. *State v. LaBorde* 234 La. 28, 99 So. 2d 11. The Louisiana Supreme Court, in the case at bar, found that there was some evidence upon which the trial court could sustain the finding of the necessary intent in this case.

There is no evidence of discriminatory administration of the Louisiana statutes involved herein which would deprive appellant of due process of law and equal protection of the laws under the Fourteenth Amendment.

There is no evidence in this record to support the contention that the statutes herein involved were discriminatorial administered by the Louisiana officials resulting in the deprivation of appellant's rights to due process of law and equal protection of the laws under the Fourteenth Amendment. Appellant and his demonstrators were not invited to appear

as they did in this particular case. As a matter of fact no one had authority to permit any group to hold a mass meeting upon the public sidewalks and public streets. It is true that after appellant and his group arrived across the street from the courthouse, they had a conversation with the authorities whereby they would be given a limited time within which to demonstrate. After this time elapsed and upon orders by the Sheriff over a loudspeaker to move on this group openly defied this command and continued this fiery and frenzied demonstration while being joined in by the twenty-three people who were incarcerated in the Parish Jail. It was only after a second admonition by the Sheriff to move on, the law enforcement officials broke up the demonstration. This demonstration the record will reflect was dispersed, not because the views of a speaker may have been incompatible with the views of the Sheriff or other local officials, but rather, because the situation was getting out of hand. There is no evidence at all in this record which would show that these Louisiana statutes in this case were discriminatorially administered by its officials.

A trial in a courtroom segregated by imposition of the state does not constitute a denial of equal protection of the laws and due process of law.

Based upon the case of *Johnson v. Virginia*, 373 U.S. 61 (1963), appellant urges that because of a segregated condition in the courtroom that an urgent Federal question, effecting the administration of justice as to him and a right to a public trial is presented. In effect, he urges that the segregated condition in

the courtroom would probably influence the trial judge in his deliberations in the cause and would probably have an effect on the credibility of witnesses. Recently, this contention was made in the petition for writs of certiorari to this Honorable Court which were denied. See *Ronnie M. Moore, Petitioner v. State of Louisiana, Respondent*, men., October Term, 1963, No. 734, 84 S.Ct. 668. In the Johnson case the objection to segregation was made by a Negro who had been arrested for contempt of court for sitting in seats assigned for white citizens, and the arrest and conviction was for that conduct. In the case at bar, there is no charge against this defendant for having violated any court imposed seating arrangement and none of the parties upon whom the asserted alleged segregation was imposed is before this court in this case. Hence, the Johnson case is no authority for the reversal of this conviction. LSA-R.S. 15:557 provides:

"No judgment shall be set aside, or a new trial granted by any appellate court of this state, in any criminal case, on the grounds of misdirection of the jury or the improper admission or rejection of evidence, or as to error of any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire record, it appears that the error complained of has probably resulted in a miscarriage of justice, is prejudicial to the substantial rights of the accused, or constitutes a substantial violation of a constitutional or statutory right."

Thus it has not been made to appear in this

record that the segregation resulted in a miscarriage of justice to this defendant.

Respectfully submitted,

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No. 49

JOHN E. DAVIS, CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1964

B. ELTON COX,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Appeal from the Supreme Court of Louisiana

**PETITION FOR RE-HEARING FROM THE
DECISION OF THIS HONORABLE COURT
REVERSING THE JUDGMENT OF THE
SUPREME COURT OF LOUISIANA
HEREIN**

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PETITION FOR RE-HEARING FROM THE
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SPECIFICATION OF ERROR NO. 1

It is respectfully submitted that the judgment of this Honorable Court herein reversing the judgment of the Louisiana Supreme Court based upon the premise that the appellant relied upon an administrative interpretation of the word, "near", and that to sustain his conviction would be tantamount to an "indefensible sort of entrapment" of him by the State, is erroneous.

ARGUMENT

Now into this Honorable Court comes the State of Louisiana, through counsel, and respectfully prays for a re-hearing of this case before a full bench for the reasons hereinafter stated.

It is stated in the majority opinion,

" . . . It is clear that the statute, with respect to the determination of how near the courthouse a particular demonstration can be, foresees a degree of on the spot administrative interpretation by officials charged with responsibility for administering and enforcing it. It is apparent that the demonstrators, such as those involved here, would justifiably tend to rely on this administrative interpretation of how 'near the courtroom a particular demonstration might take place . . . ' The record here clearly shows that the officials present gave permission for the demonstration to take place across the street from the courthouse . . . this testimony is not only uncontradicted, but is corroborated by the State's witnesses who were present. Police Chief White testified that he told Cox 'he must confine' the demonstration 'to the west side of the street.' " Majority Opinion, Justice Goldberg, pages 10 and 11.

This record does not reflect that Cox ever sought or relied upon any administrative interpretation of how near to the courthouse this particular demonstration might take place. Just prior to this conversation that Chief White had with Cox, and within two blocks from where the conversation which he had with White took place, Cox had a prior conversation with Captain Font of the City Police Department and Chief Kling of the Sheriff's Office, wherein this court correctly interpreted what happened.

"Kling asked Cox to disband the group and 'take them back from whence they came.' Cox did not

acquiesce in this request but told the officers that they would march by the courthouse, say prayers, sing hymns and conduct a peaceful program of protest. The officer repeated his request to disband and Cox again refused. Kling and Font then returned to their car in order to report by radio to the Sheriff and Chief of Police who were in the immediate vicinity; while this was going on, the students, led by Cox, began their walk toward the courthouse." See Majority Opinion, Mr. Justice Goldberg, *B. Elton Cox v. State of Louisiana*, No. 24, October Term, 1964, this Court's docket, page 3.

It is unrefuted that at that particular time and point Cox did not seek permission as to where to hold this demonstration, and he informed these officers that they were going to march by the courthouse. This record does not contain any evidence whatsoever of any reliance upon any administrative advice given by anyone.

"They walked in an orderly and peaceful file two or three abreast one block east, stopping on the way for a red traffic light. In the center of this block, they were joined by another group of students. The augmented group now totaling about 2,000, turned the corner and proceeded south, coming to a halt in the next block opposite the courthouse.

"As Cox, still at the head of the group, approached the vicinity of the courthouse, he was stopped by Captain Font and Inspector Trigg and brought to Police Chief Wingate White, who was standing in the middle of St. Louis Street.

The Chief then inquired as to the purpose of the demonstration. Cox, reading from a prepared paper, outlined his program to White, stating that it would include a singing of the Star Spangled Banner and a freedom song, recitation of the Lord's Prayer and a Pledge of Allegiance, and a short speech. White testified that he told Cox that he "must confine" the demonstration "to the west side of the street." White added, "This, of course, was not—I didn't mean it in the import that I was giving him any permission to do it, but I was presented with a situation that was accomplished, and I had to make a decision."

Further testifying, Cox said:

"My understanding was that they would be allowed to demonstrate if they stayed on the west side of the street and stayed within the recognized time. And this was agreed to by White."

This Honorable Court erred herein in accepting the testimony of Cox with reference to his reliance upon alleged permission by Chief White and in rejecting the testimony of Chief White with reference to the fact that he didn't mean to import that he was giving any permission to do anything, but that he was presented with a situation that was accomplished and that he had to make a decision. This court erred in accepting the self-serving declaration of Cox with reference to permission, because to do so, would be in complete disharmony with what this record shows had previously happened. See Majority Opinion, *Cox v. Louisiana*, Mr. Justice Goldberg No. 24, October Term, 1964, pages 3 and 4. This court accepts the evidence

that applied to Cox's and White's short conversation, and also the evidence that a short distance therefrom when confronted by Captain Font and Chief Kling and ordered to disband and go from whence they came, that Cox, not once but on two occasions, stated his declared intention of going to demonstrate, to protest the illegal arrest of several of their people who were being held in jail, and they would march by the courthouse. This testimony is not consistent with the acceptance of the self-serving declaration by Cox that he relied upon Chief White's statement. Not only did Cox not seek permission from Captain Font and Chief Kling with reference to where he might demonstrate, but no permission was sought from Chief White. In order to further corroborate Cox's statement to Captain Font and Chief Kling that he was going to the courthouse to demonstrate, he actually left them, and before he was actually intercepted by Chief White, he was on the same street that runs next to the courthouse, headed toward the courthouse, and when intercepted by White was in the next block opposite the courthouse. It is also significant to note that Cox did not seek White out, rather White intercepted Cox and had Cox brought to him. At that time, of course, White had received a communication by radio from Captain Font and Chief Kling which was made immediately after their conversation with Cox. It is stated in the majority opinion in this case, Mr. Justice Goldberg, at page 11:

"The record shows that at no time did the police recommend or even suggest, that the demonstra-

tion be held further from the courthouse than it actually was."

The simple answer to that observation of the record is that evidence does show, without refutation, that Cox was asked "to disband the group and take them back from whence they came." Majority Opinion No. 24, October Term, 1964, Mr. Justice Goldberg, page 3.

The Majority Opinion herein states that it would be an indefensible sort of entrapment by the State to sustain this conviction of a citizen for exercising a privilege which the State has clearly told him was available to him.

The rationale of the legal concept of entrapment is that officers of the law shall not incite crime merely to punish the criminal. In keeping with this philosophy which sustains it, the defense of this entrapment has a limited application. It is restricted to those instances in which the defendant is induced or incited to commit a crime, not originally intended or contemplated by him for the purpose of arresting and prosecuting him. The fact that an opportunity is furnished or that the defendant is aided in the commission of a crime which originated in his own mind constitutes no defense. There is a clear distinction between inducing a person to commit a crime and setting a trap to catch him in the execution of the criminal designs of his own conceptions. In the judicial formulation of this doctrine, the primary emphasis is on the defendant's predisposition to commit the crime. The limitations implicit in the doctrine itself have been uni-

versally recognized. *State of Louisiana v. Jim Turner and Seymour Wheeler*, 127 So. 2d 514, 241 La. 95. 22 Corpus Juris Secundum, Section 45, page 99. This record, of course, does not meet the preceding criterion in order to constitute entrapment.

This idea of the demonstration near the courthouse originated with this appellant during the early morning hours preceding this demonstration which occurred during the noon hour of that date at a distance of some five miles north of the courthouse. The execution of this plan to demonstrate at the courthouse commenced some five miles north of the courthouse and proceeded to the Old State Capitol Building, which is situated about three blocks from the courthouse. At that place and at that time, appellant, Cox, declared to Officers Kling and Font his intention to demonstrate at the courthouse. His actions thereafter confirmed his declared intention, for he and his group started toward the courthouse until they were intercepted by Chief White in the block next to the courthouse while walking along the west sidewalk of St. Louis Street, which runs parallel and adjacent to the courthouse. After the public declaration of their intention to demonstrate at the courthouse that morning, at the noon hour when they were intercepted by Chief White, they had come within one block of their declared destination. In view of the foregoing, as supported by this record, it could not be said that the activity in which this appellant was engaged did not originate in his mind. It could not be said that Cox, at a time which the execution of this

predeclared plan was practically culminated, was induced by Chief White. Cox could not have gotten any further away from the courthouse than on the west sidewalk along St. Louis Street, which is where he was and which is where he intended to stay, prior to his interception by Chief White. Additionally, this court in its phraseology "indefensible sort of entrapment by the State" ostensibly recognizes that this is not a case of legal entrapment as universally known. This phraseology is taken by this court from *Raley v. Ohio*, 360 U.S. 423, which this court submits as authority for its holding in this case. In *Raley*, the setting of the alleged criminal acts, contempt of the commission, were held in a commission hearing room pursuant to prior notice of hearing and matter to be investigated. The Commission, or one of its members, expressly informed the accused that they enjoyed the privilege under the Fifth Amendment to refuse to answer questions that might tend to incriminate them. The privilege was so claimed by these defendants. In no case did the commission direct that the defendants answer the questions to which they had pleaded the privilege. Thus, *Raley* presents a situation which occurred during a formal hearing of a legislative committee, whose members had specifically instructed some of the appellants therein that they were entitled to claim the privilege against self-incrimination; that these defendants so claimed said privilege, and that without any insistence or direction to the defendants to answer the particular questions to which they had claimed the privilege they were indicted for contempt

of the said Committee. The facts of *Raley* fully support the decision of this court that to sustain said convictions would be an indefensible sort of entrapment by the State. In *Raley*, the subject matter forming the basis of the charges were fully discussed in the quiet and formal environs of a committee hearing room.

The factual circumstances in the case at bar envisions a crowd of some 2,000, who had come from approximately five miles away toward their destination pursuant to the proclaimed declaration through the news media and to various law enforcement officers to demonstrate against the alleged illegal arrest of some of their members near the courthouse. It was while these marchers were out on the sidewalk marching toward their declared goal, when they were intercepted by White who informed them to keep the demonstration on the west sidewalk of St. Louis Street. This statement by White was not made in response to a request by Cox, but it was apparently made on White's own initiative in an atmosphere of apprehension, and; as White himself so testified, he did not intend that it be giving Cox permission to hold this demonstration.

It is respectfully submitted that in all due deference to this court's holding in its Majority Opinion, the *Raley* case is not applicable to the case at bar.

In order to arrive at its decision herein and the premises upon which it is based, the Majority Opinion holds that Louisiana Revised Statute 14:401 en-

visions, and foresees a degree of administrative interpretation, which, in effect, was sought by Cox, made by Chief White, and relied upon by Cox to his detriment in the form of this State conviction. This court upholds the validity of the authority giving right to make such an administrative interpretation, citing *Cox v. New Hampshire*, 312 U.S. 569.

In the foregoing cited case, the statute therein, with which this court was concerned, specifically delegated authority to a licensing committee who had the authority under specific guidelines to issue permits for various theatrical and dramatic exhibitions. LSA-R.S. 14:401, of course, refers to no agency dutybound to make any administrative decision with reference to its application. Any time an officer makes an arrest for a misdemeanor which he deems to have been committed within his presence, he must make a determination as to whether the misdemeanor is or is not being committed, and, therefore, as to whether he should or should not make the arrest. The interpretation for the alleged violation resulting in a conviction is for the judiciary, and not the police officer making the arrest. To nullify this conviction as this court has done on the basis of what some officer has said under the circumstances of this case would be to relegate the effective enforcement of State laws to the action of some police officer rather than to the judiciary after a full hearing on the merits of the case.

SPECIFICATION OF ERROR NO. 2

This Honorable Court in reversing herein based

its decision upon the grounds that the Louisiana State Supreme Court could not consider.

Article 7, Section 10 of the Louisiana Constitution of 1921, provides that the appellate jurisdiction of the Supreme Court of Louisiana shall extend in criminal cases to questions of law alone. Thus, the Louisiana Supreme Court is powerless to consider and does not pass upon the sufficiency of evidence in a criminal case. *State v. Alnerico*, 232 La. 847; 93 So. 2d 334. *State v. Hand*, 228 La. 405, 82 So. 2d 691; *State v. Hilliard*, 227 La. 288, 78 So. 2d 835; *State v. Paternostio*, 225 La. 369, 73 So. 2d 177. Since the Louisiana Supreme Court is limited in its review of criminal cases to questions of law only, and is prohibited by the Louisiana Constitution from passing upon the sufficiency of evidence, this court under its own mandate of review of state criminal cases should consider itself so constrained. If there is some evidence, no matter how little, to support a conviction, the Louisiana Supreme Court is constitutionally constrained to accept it, the question of sufficiency being beyond the scope of its constitutional right and power to review. Also, this court has held that whether a conviction was unconstitutional under the due process of law clause depended upon whether such conviction rested upon any evidence at all rather than upon the sufficiency of evidence. *Thompson v. City of Louisville, Kentucky*, (1960) 80 Sup. Ct. 624, 360 U.S. 199, 4 Law Ed. 2d 654.

This is not a case where the record herein is so totally devoid of evidentiary support of the state con-

viction as to be unconstitutional under the due process clause. There is a difference between a conviction based upon evidence deemed insufficient as a matter of state law and one so totally devoid of evidentiary support as to raise the due process issue, and it is only in the latter situation that there is a violation of the due process clause. *Grundlur v. North Carolina*, C.A.N.C. (1960) 283 F. 2d 798.

It is respectfully submitted that to maintain the holding of this court with reference to this reversal would be to do violence to the foregoing laws as enunciated in the cited cases.

It is respectfully submitted that this petition for re-hearing should be granted and that a re-hearing of this case should be had before a full bench.

Respectfully submitted,

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By:

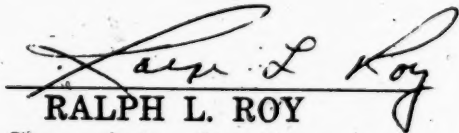

RALPH L. ROY

CERTIFICATE

I CERTIFY that this petition is presented in good faith and not for delay.

I further certify that a copy of this petition for re-hearing has been served upon counsel of record for the defendants herein, prior to filing of same, by U. S. Mail, with sufficient postage affixed thereto, properly addressed to their respective offices.

Baton Rouge, Louisiana, this 3rd day of February, 1965.


RALPH L. ROY
Counsel for Petitioner

SUPREME COURT OF THE UNITED STATES

No. 49.—OCTOBER TERM, 1964.

B. Elton Cox, Appellant, v. State of Louisiana.	}	On Appeal From the Supreme Court of Louisiana.
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[January 18, 1965.]

MR. JUSTICE GOLDBERG delivered the opinion of the Court.

Appellant was convicted of violating a Louisiana statute which provides:

"Whoever, with the intent of interfering with, obstructing or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana . . . shall be fined not more than five thousand dollars or imprisoned not more than one year, or both." La. Rev. Stat. § 14:401 (Cum. Supp. 1962).

This charge was based upon the same set of facts as the "disturbing the peace" and "obstructing a public passage" charges involved and set forth in No. 24, *ante*, and was tried along with those offenses. Appellant was convicted on this charge also and was sentenced to the maximum penalty under the statute of one year in jail and a \$5,000 fine, which penalty was cumulative with those in No. 24. These convictions were affirmed by the Louisiana Supreme Court, 245 La. 303, 158 So. 2d 172. Appellant appealed to this Court contending that the statute was unconstitutional on its face and as applied to him. We noted probable jurisdiction, 377 U. S. 921.

I.

We shall first consider appellant's contention that this statute must be declared invalid on its face as an unjustified restriction upon freedoms guaranteed by the First and Fourteenth Amendments to the United States Constitution.

This statute was passed by Louisiana in 1950 and was modeled after an identical statute pertaining to the federal judiciary, which Congress passed in 1949, 64 Stat. 1018, 18 U. S. C. §1507 (1958 ed.). Since that time, Massachusetts and Pennsylvania have passed similar statutes. Mass. Ann. Laws, 1956, c. 268, § 13A; Purdon's Pa. Stat. Ann., 1963, Tit. 18, § 4327. The federal statute resulted from the picketing of federal courthouses by partisans of the defendants during trials involving leaders of the Communist Party. This picketing prompted an adverse reaction both from the bar and the general public. A number of groups urged legislation to prohibit it. At a special meeting held in March 1949, the Judicial Conference of the United States passed the following resolution: "*Resolved*, That we condemn the practice of picketing the courts, and believe that effective means should be taken to prevent it." Report of the Judicial Conference of the United States, 203 (1949). A Special Committee on Proposed Legislation to Prohibit Picketing of the Courts was appointed to make recommendations to the Conference on this subject. *Ibid.* In its Report to the Judicial Conference, dated September 23, 1949, at p. 3, the Special Committee stated: "The sentiment of bar associations and individual lawyers has been and is practically unanimous in favor of legislation to prohibit picketing of courts." Upon the recommendation of this Special Committee, the Judicial Conference urged the prompt enactment of the then pending bill. Report of the Judicial Conference of the United States, 17-18 (1949). Similar recommendations were made by

the American Bar Association, numerous state and local bar associations, and individual lawyers and judges. See Joint Hearings before the Subcommittees of the Committees on the Judiciary on S. 1681 and H. R. 3766, 81st Cong., 1st Sess.; H. R. Rep. No. 1281, 81st Cong., 1st Sess.; S. Rep. No. 732, 81st Cong., 1st Sess.; Bills Condemning Picketing of Courts Before Congress, 33 J. Am. Jud. Soc. 53 (1949).

This statute, unlike the two previously considered, is a precise, narrowly drawn regulatory statute which proscribes certain specific behavior. Cf. *Edwards v. South Carolina*, 372 U. S. 229, 236. It prohibits a particular type of conduct, namely, picketing and parading, in a few specified locations, in or near courthouses.

There can be no question that a State has a legitimate interest in protecting its judicial system from the pressures which picketing near a courthouse might create. Since we are committed to a government of laws and not of men, it is of the utmost importance that the administration of justice be absolutely fair and orderly. This Court has recognized that the unhindered and untrammelled functioning of our courts is part of the very foundation of our constitutional democracy. See *Wood v. Georgia*, 370 U. S. 375, 383. The constitutional safeguards relating to the integrity of the criminal process attend every stage of a criminal proceeding, starting with arrest and culminating with a trial "in a courtroom presided over by a judge." *Rideau v. Louisiana*, 373 U. S. 723, 727. There can be no doubt that they embrace the fundamental conception of a fair trial, and that they exclude influence or domination by either a hostile or friendly mob. There is no room at any stage of judicial proceedings for such intervention; mob law is the very antithesis of due process. See *Frank v. Mangum*, 237 U. S. 309, 347 (Holmes, J., dissenting). A State may adopt safeguards necessary and appropriate to assure that

the administration of justice at all stages is free from outside control and influence. A narrowly drawn statute such as the one under review is obviously a safeguard both necessary and appropriate to vindicate the State's interest in assuring justice under law.

Nor does such a statute infringe upon the constitutionally protected rights of free speech and free assembly. The conduct which is the subject of this statute—picketing and parading—is subject to regulation even though intertwined with expression and association. The examples are many of the application by this Court of the principle that certain forms of conduct mixed with speech may be regulated or prohibited. The most classic of these was pointed out long ago by Mr. Justice Holmes: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." *Schenck v. United States*, 249 U. S. 47, 52. A man may be punished for encouraging the commission of a crime, *Fox v. Washington*, 236 U. S. 273, or for uttering "fighting words," *Chaplinsky v. New Hampshire*, 315 U. S. 568. This principle has been applied to picketing and parading in labor disputes. See *Hughes v. Superior Court*, 339 U. S. 460; *Giboney v. Empire Storage & Ice Co.*, 336 U. S. 490; *Building Service Employees v. Gazzam*, 339 U. S. 532. But cf. *Thornhill v. Alabama*, 310 U. S. 88. These authorities make it clear, as the Court said in *Giboney*, that "it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." *Giboney v. Empire Storage and Ice Co.*, *supra*, at 502.

Bridges v. California, 314 U. S. 252, and *Pennekamp v. Florida*, 328 U. S. 331, do not hold to the contrary. Both these cases dealt with the power of a judge to sentence for contempt persons who published or caused to be pub-

lished writings commenting on judicial proceedings. They involved newspaper editorials, an editorial cartoon, and a telegram sent by a labor leader to the Secretary of Labor. Here we deal not with the contempt power—a power which is “based on a common law concept of the most general and undefined nature.” *Bridges v. California*, *supra*, at 260. Rather, we are reviewing a statute narrowly drawn to punish specific conduct that infringes a substantial state interest in protecting the judicial process. See *Cantwell v. Connecticut*, 310 U. S. 296, 307–308; *Giboney v. Empire Storage & Ice Co.*, *supra*. We are not concerned here with such a pure form of expression as newspaper comment or a telegram by a citizen to a public official. We deal in this case not with free speech alone, but with expression mixed with particular conduct. In *Giboney*, this Court expressly recognized this distinction when it said, “In holding this, we are mindful of the essential importance to our society of a vigilant protection of freedom of speech and press. *Bridges v. California*, 314 U. S. 252, 263. States cannot consistently with our Constitution abridge those freedoms to obviate slight inconveniences or annoyances. *Schneider v. State*, 308 U. S. 147, 162. But placards used as an essential and inseparable part of a grave offense against an important public law cannot immunize that unlawful conduct from state control.” 336 U. S., at 501–502.

We hold that this statute on its face is a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and that the fact that free speech is intermingled with such conduct does not bring with it constitutional protection.

II.

We now deal with the Louisiana statute as applied to the conduct in this case. The group of 2,000, led by appellant, paraded and demonstrated before the court-

house. Judges and court officers were in attendance to discharge their respective functions. It is undisputed that a major purpose of the demonstration was to protest what the demonstrators considered an "illegal" arrest of 23 students the previous day. While the arraignment or trial of the students had not been set for any day certain, they were charged with violation of the law, and the judges responsible for trying them and passing upon the legality of their arrest were then in the building.

It is, of course, true that most judges will be influenced only by what they see and hear in court. However, judges are human; and the legislature has the right to recognize the danger that some judges, jurors, and other court officials, will be consciously or unconsciously influenced by demonstrations in or near their courtrooms both prior to as well as at the time of the trial. A State may also properly protect the judicial process from being misjudged in the minds of the public. Suppose demonstrators paraded and picketed for weeks with signs asking that indictments be dismissed, and that a judge, completely uninfluenced by these demonstrations, dismissed the indictments. A State may protect against the possibility of a conclusion by the public under these circumstances, that the judge's action was in part a product of intimidation and did not flow only from the fair and orderly working of the judicial process. See S. Rep. No. 732, 81st Cong., 1st Sess., 4.

Appellant invokes the clear and present danger doctrine in support of his argument that the statute cannot constitutionally be applied to the conduct involved here. He says, relying upon *Pennekamp* and *Bridges*, that "[n]o reason exists to apply a different standard to the case of a criminal penalty for a peaceful demonstration in front of a courthouse than the standard of clear and

present danger applied in the contempt cases." He defines the standard to be applied to both situations to be whether the expression of opinion presents a clear and present danger to the administration of justice.

We have already pointed out the important differences between the contempt cases and the present one, *supra*, at 4-5. Here we deal not with the contempt power but with a narrowly drafted statute and not with speech in its pristine form but with conduct of a totally different character. Even assuming the applicability of a general clear and present danger test, it is one thing to conclude that the mere publication of a newspaper editorial or a telegram to a Secretary of Labor, however critical of a court, presents no clear and present danger to the administration of justice and quite another thing to conclude that crowds, such as this, demonstrating before a courthouse may not be prohibited by a legislative determination based on experience that such conduct inherently threatens the judicial process. We therefore reject the clear and present danger argument of appellant.

III.

Appellant additionally argues that his conviction violated due process as there was no evidence of intent to obstruct justice or influence any judicial official as required by the statute. *Thompson v. Louisville*, 362 U. S. 199. We cannot agree that there was no evidence within the "due process" rule enunciated in *Thompson v. Louisville*. We have already noted that various witnesses and Cox himself stated that a major purpose of the demonstration was to protest what was considered to be an illegal arrest of 23 students. Thus, the very subject matter of the demonstration was an arrest which is normally the first step in a series of legal proceedings. The demonstration was held in the vicinity of the courthouse

where the students' trials would take place. The courthouse contained the judges who in normal course would be called upon to try the students' cases just as they tried appellant. Ronnie Moore, the student leader of the demonstration, a defense witness, stated, as we understand his testimony, that the demonstration was in part to protest injustice; he felt it was a form of "moral persuasion" and hoped it would have its effects. The fact that the students were not then on trial and had not been arraigned is not controlling in the face of this affirmative evidence manifesting the plain intent of the demonstrators to condemn the arrest and ensuing judicial proceedings against the prisoners as unfair and unwarranted. The fact that by their lights appellant and the 2,000 students were seeking justice and not its obstruction is as irrelevant as would be the motives of the mob condemned by Justice Holmes in *Frank v. Mangum, supra*. Louisiana, as we have pointed out *supra*, has the right to construe its statute to prevent parading and picketing from unduly influencing the administration of justice at any point or time in its process, regardless of whether the motives of the demonstrators are good or bad.

While this case contains direct evidence taking it out of the *Thompson v. Louisville* doctrine, even without this evidence, we would be compelled to reject the contention that there was no proof of intent. Louisiana surely has the right to infer the appropriate intent from circumstantial evidence. At the very least, a group of demonstrators parading and picketing before a courthouse where a criminal charge is pending, in protest against the arrest of those charged, may be presumed to intend to influence judges, jurors, witnesses or court officials. Cf. *Screws v. United States*, 325 U. S. 91, 107 (opinion of MR. JUSTICE DOUGLAS).

Absent an appropriately drawn and applicable statute, entirely different considerations would apply if, for exam-

ple, the demonstrators were picketing to protest the actions of a mayor or other official of a city completely unrelated to any judicial proceedings, who just happened to have an office located in the courthouse building. Cf. *In the Matter of Brinn*, 305 N. Y. 887, 114 N. E. 2d 430; Joint Hearings, *supra*, at 20.

IV.

There are, however, more substantial constitutional objections arising from appellant's conviction on the particular facts of this case. Appellant was convicted for demonstrating not "in," but "near" the courthouse. It is undisputed that the demonstration took place on the west sidewalk, the far side of the street, exactly 101 feet from the courthouse steps and, judging from the pictures in the record, approximately 125 feet from the courthouse itself. The question is raised as to whether the failure of the statute to define the word "near" renders it unconstitutionally vague. See *Lanzetta v. New Jersey*, 306 U. S. 451. Note, *The Void for Vagueness Doctrine in the Supreme Court*, 109 U. Pa. L. Rev. 67. It is clear that there is some lack of specificity in a word such as "near."¹ While this lack of specificity may not render the statute unconstitutionally vague, at least as applied to a demonstration within the sight and hearing of those in the courthouse,² it is clear that the statute, with respect to

¹ This is to be contrasted, for example, with the express limitation proscribing certain acts within 500 feet of foreign embassies, legations, or consulates within the District of Columbia. 52 Stat. 30 (1938); D. C. Code, 1961, § 22-1115. See also McKinney's N. Y. Laws, Penal Law § 600 (prohibiting certain activities within 200 feet of a courthouse).

² Cf. *United States v. National Dairy Products Corp.*, 372 U. S. 29, Note, 109 U. Pa. L. Rev., c. 7. Cf. *Cole v. Arkansas*, 333 U. S. 196 (holding constitutional a statute making certain types of action unlawful if done "at or near" any place where a labor dispute exists, though the issue of the possible vagueness of the word "near" in the context of that case was not expressly faced).

the determination of how near the courthouse a particular demonstration can be, forsee a degree of on-the-spot administrative interpretation by officials charged with responsibility for administering and enforcing it. It is apparent that demonstrators, such as those involved here, would justifiably tend to rely on this administrative interpretation of how "near" the courthouse a particular demonstration might take place. Louisiana's statutory policy of preserving order around the courthouse would counsel encouragement of just such reliance. This administrative discretion to construe the term "near" concerns a limited control of the streets and other areas in the immediate vicinity of the courthouse and is the type of narrow discretion which this Court has recognized as the proper role of responsible officials in making determinations concerning the time, place, duration, and manner of demonstrations. See *Cox v. New Hampshire*, 312 U. S. 569; *Poulos v. New Hampshire*, 345 U. S. 395. See generally the discussion on this point in No. 24: pp. 16-21, *ante*. It is not the type of unbridled discretion which would allow an official to pick and choose among expressions of view the ones he will permit to use the streets and other public facilities, which we have invalidated in the obstruction of public passages statute as applied in No. 24, *ante*. Nor does this limited administrative regulation of traffic which the Court has consistently recognized as necessary and permissible, constitute a waiver of law which is beyond the power of the police. Obviously telling demonstrators how far from the courthouse steps is "near" the courthouse for purposes of a permissible peaceful demonstration is a far cry from allowing one to commit, for example, murder, or robbery.³

³ See American Law Institute, Model Penal Code § 2.04 (3) (b) and comment thereon, Tentative Draft No. 4, pp. 17-18, 138-139; Hall and Seligman, Mistake of Law and Mens Rea, 8 U. Chi. L. Rev. 641, 675-677 (1941); *People v. Ferguson*, 134 Cal. App. 41, 24 P. 2d 965.

The record here clearly shows that the officials present gave permission for the demonstration to take place across the street from the courthouse. Cox testified that they gave him permission to conduct the demonstration on the far side of the street. This testimony is not only uncontradicted but is corroborated by the State's witnesses who were present. Police Chief White testified that he told Cox "he must confine" the demonstration "to the west side of the street."⁴ James Erwin, news director of radio station WIBR, agreed that Cox was given permission for the assembly as long as it remained within a designated time. When Sheriff Clemens sought to break up the demonstration, he first announced, "now you have been allowed to demonstrate."⁵ The Sheriff testified that he had "no objection" to the students "being assembled on that side of the street." Finally, in its brief before this Court, the State did not contend that permission was not granted. Rather in its statement of the facts and argument it conceded that the officials gave Cox and his group some time to demonstrate across the street from the courthouse. This agreement by the State that in fact permission had been granted to demonstrate across the street from the courthouse—at least for a limited period of time, which the State contends was set at seven minutes—was confirmed by counsel for the State in oral argument before this Court.

The record shows that at no time did the police recommend, or even suggest, that the demonstration be held further from the courthouse than it actually was. The police admittedly had prior notice that the demonstration was planned to be held in the vicinity of the courthouse. They were prepared for it at that point and so stationed

⁴ It is true that the Police Chief testified that he did not subjectively intend to grant permission, but there is no evidence at all that this subjective state of mind was ever communicated to appellant, or in fact to anyone else present.

⁵ See p. 13, *infra*, for the Sheriff's full statement at this time.

themselves and their equipment as to keep the demonstrators on the far side of the street. As Cox approached the vicinity of the courthouse, he was met by the Chief of Police and other officials. At this point not only was it not suggested that they hold their assembly elsewhere, or disband, but they were affirmatively told that they could hold the demonstration on the sidewalk of the far side of the street, 101 feet from the courthouse steps. This area was effectively blocked off by the police and traffic rerouted.

Thus, the highest police officials of the city, in the presence of the Sheriff and Mayor, in effect told the demonstrators that they could meet where they did, 101 feet from the courthouse steps, but could not meet closer to the courthouse. In effect, appellant was advised that a demonstration at the place it was held would not be one "near" the courthouse within the terms of the statute.

In *Raley v. Ohio*, 360 U. S. 423, this Court held that the Due Process Clause prevented conviction of persons for refusing to answer questions of a state investigating commission when they relied upon assurances of the commission, either express or implied, that they had a privilege under state law to refuse to answer, though in fact this privilege was not available to them. The situation presented here is analogous to that in *Raley*, which we deem to be controlling. As in *Raley*, under all the circumstances of this case, after the public officials acted as they did, to sustain appellant's later conviction for demonstrating where they told him he could "would be to sanction an indefensible sort of entrapment by the State—convicting a citizen for exercising a privilege which the State had clearly told him was available to him." *Id.*, at 426. The Due Process Clause does not permit convictions to be obtained under such circumstances.

This is not to say that had the appellant, entirely on his own, held the demonstration across the street from the courthouse within the sight and hearing of those inside, or *a fortiori*, had he defied an order of the police requiring him to hold this demonstration at some point further away out of the sight and hearing of those inside the courthouse, would we reverse the conviction as in this case. In such cases a state interpretation of the statute to apply to the demonstration as being "near" the courthouse would be subject to quite different considerations. See pp. 9-10, *supra*.

There remains just one final point: the effect of the Sheriff's order to disperse. The State in effect argues that this order somehow removed the prior grant of permission and reliance on the officials' construction that the demonstration on the far side of the street was not illegal as being "near" the courthouse. This, however, we cannot accept. Appellant was led to believe that his demonstration on the far side of the street violated no statute. He was expressly ordered to leave, not because he was peacefully demonstrating too near the courthouse, nor because a time limit originally set had expired, but because officials erroneously concluded that what he said threatened a breach of the peace. This is apparent from the face of the Sheriff's statement when he ordered the meeting dispersed: "Now you have been allowed to demonstrate. Up until now your demonstration has been more or less peaceful, but what you are doing now is a direct violation of the law, a disturbance of the peace, and it has got to be broken up immediately." See discussion in No. 24, *ante*, at 9-14. Appellant correctly conceived, as we have held in No. 24, *ante*, that this was not a valid reason for the dispersal order. He therefore was still justified in his continued belief that because of the original official grant of permission he had a right to stay where he was for

the few additional minutes required to conclude the meeting. In addition, even if we were to accept the state's version that the sole reason for terminating the demonstration was that appellant exceeded the narrow time limits⁶ set by the police, his conviction could not be sustained. Assuming the place of the meeting was appropriate—as appellant justifiably concluded from the official grant of permission—nothing in this courthouse statute, nor in the breach of the peace or obstruction of public passages statutes with their broad sweep and application that we have condemned in No. 24, *ante*, at 16–21, authorizes the police to draw the narrow time line, unrelated to any policy of these statutes, that would be approved if we were to sustain appellant's conviction on this ground. Indeed, the allowance of such unfettered discretion in the police would itself constitute a procedure such as that condemned in No. 24, *ante*, at 16–21. In any event, as we have stated, it is our conclusion from the record that the dispersal order had nothing to do with any time or place limitation, and thus, on this ground alone, it is clear that the dispersal order did not remove the protection accorded appellant by the original grant of permission.

Of course this does not mean that the police cannot call a halt to a meeting which though originally peaceful, becomes violent. Nor does it mean that, under properly drafted and administered statutes and ordinances, the authorities cannot set reasonable time limits for assemblies related to the policies of such laws and then order them dispersed when these time limits are exceeded. See the discussion in No. 24, *ante*, at 16–21. We merely hold that, under circumstances such as those present in this

⁶ As we have pointed out in No. 24, *ante*, at 4, n. 2, the evidence is conflicting as to whether appellant and his group were given only a limited time to hold their meeting and whether, if so, such a time limit was exceeded.

case, appellant's conviction cannot be sustained on the basis of the dispersal order.

Nothing we have said here or in No. 24, *ante*, is to be interpreted as sanctioning riotous conduct in any form or demonstrations, however peaceful their conduct or commendable their motives, which conflict with properly drawn statutes and ordinances designed to promote law and order, protect the community against disorder, regulate traffic, safeguard legitimate interests in private and public property, or protect the administration of justice and other essential governmental functions.

Liberty can only be exercised in a system of law which safeguards order. We reaffirm the repeated holdings of this Court that our constitutional command of free speech and assembly is basic and fundamental and encompasses peaceful social protest, so important to the preservation of the freedoms treasured in a democratic society. We also reaffirm the repeated decisions of this Court that there is no place for violence in a democratic society dedicated to liberty under law, and that the right of peaceful protest does not mean that everyone with opinions or beliefs to express may do so at any time and at any place. There is a proper time and place for even the most peaceful protest and a plain duty and responsibility on the part of all citizens to obey all valid laws and regulations. There is an equally plain requirement for laws and regulations to be drawn so as to give citizens fair warning as to what is illegal; for regulation of conduct that involves freedom of speech and assembly not to be so broad in scope so as to stifle First Amendment freedoms, which "need breathing space to survive," *NAACP v. Button*, 371 U. S. 415, 433; for appropriate limitations on the discretion of public officials where speech and assembly are intertwined with regulated conduct; and for all such laws and regulations to be applied with an equal hand. We

believe that all of these requirements can be met in an ordered society dedicated to liberty. We reaffirm our conviction that "[f]reedom and viable government are . . . indivisible concepts." *Gibson v. Florida Legislative Comm.*, 372 U. S. 539, 546.

The application of these principles requires us to reverse the judgment of the Supreme Court of Louisiana.

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 24.—OCTOBER TERM, 1964.

B. Elton Cox, Appellant,	} On Appeal From the Supreme Court of Louisiana.
v.	
State of Louisiana.	

[January 18, 1965.]

MR. JUSTICE GOLDBERG delivered the opinion of the Court.

Appellant, the Reverend Mr. B. Elton Cox, the leader of a civil rights demonstration, was arrested and charged with four offenses under Louisiana law—criminal conspiracy, disturbing the peace, obstructing public passages, and picketing before a courthouse. In a consolidated trial before a judge without a jury, and on the same set of facts, he was acquitted of criminal conspiracy but convicted of the other three offenses. He was sentenced to serve four months in jail and pay a \$200 fine for disturbing the peace, to serve five months in jail and pay a \$500 fine for obstructing public passages, and to serve one year in jail and pay a \$5,000 fine for picketing before a courthouse. The sentences were cumulative.

In accordance with Louisiana procedure, the Louisiana Supreme Court reviewed the “disturbing the peace” and “obstructing public passages” convictions on certiorari, and the “courthouse picketing” conviction on appeal. The Louisiana court, in two judgments, affirmed all three convictions. 244 La. 1087, 156 So. 2d 448; 245 La. 303, 158 So. 2d 172. Appellant filed two separate appeals to this Court from these judgments contending that the three statutes under which he was convicted were unconstitutional on their face and as applied. We noted prob-

able jurisdiction of both appeals, 377 U. S. 921. This case, No. 24, involves the convictions for disturbing the peace and obstructing public passages, and No. 49 concerns the conviction for picketing before a courthouse.

I.

THE FACTS.

On December 14, 1961, 23 students from Southern University, a Negro college, were arrested in downtown Baton Rouge, Louisiana, for picketing stores that maintained segregated lunch counters. This picketing, urging a boycott of those stores, was part of a general protest movement against racial segregation, directed by the local chapter of the Congress of Racial Equality, a civil rights organization. The appellant, an ordained Congregational minister, the Reverend Mr. B. Elton Cox, a Field Secretary of CORE, was an advisor to this movement. On the evening of December 14, appellant and Ronnie Moore, student president of the local CORE chapter, spoke at a mass meeting at the college. The students resolved to demonstrate the next day in front of the courthouse in protest of segregation and the arrest and imprisonment of the picketers who were being held in the parish jail located on the upper floor of the courthouse building.

The next morning about 2,000 students left the campus, which was located approximately five miles from downtown Baton Rouge. Most of them had to walk into the city since the drivers of their busses were arrested. Moore was also arrested at the entrance to the campus while parked in a car equipped with a loudspeaker, and charged with violation of an antinoise statute. Because Moore was immediately taken off to jail and the vice president of the CORE chapter was already in jail for picketing, Cox felt it his duty to take over the demonstration and see that it was carried out as planned. He

quickly drove to the city "to pick up this leadership and keep things orderly."

When Cox arrived, 1,500 of the 2,000 students were assembling at the site of the Old State Capitol building, two and one-half blocks from the courthouse. Cox walked up and down cautioning the students to keep to one side of the sidewalk while getting ready for their march to the courthouse. The students circled the block in a file two or three abreast occupying about half of the sidewalk. The police had learned of the proposed demonstration the night before from news media and other sources. Captain Font of the City Police Department and Chief Kling of the Sheriff's office, two high-ranking subordinate officials, approached the group and spoke to Cox at the northeast corner of the capitol grounds. Cox identified himself as the group's leader, and, according to Font and Kling, he explained that the students were demonstrating to protest "the illegal arrest of some of their people who were being held in jail." The version of Cox and his witnesses throughout was that they came not "to protest just the arrest but . . . [also] to protest the evil of discrimination." Kling asked Cox to disband the group and "take them back from whence they came." Cox did not acquiesce in this request but told the officers that they would march by the courthouse, say prayers, sing hymns, and conduct a peaceful program of protest. The officer repeated his request to disband, and Cox again refused. Kling and Font then returned to their car in order to report by radio to the Sheriff and Chief of Police who were in the immediate vicinity; while this was going on, the students, led by Cox, began their walk toward the courthouse.

They walked in an orderly and peaceful file, two or three abreast, one block east, stopping on the way for a red traffic light. In the center of this block they were joined by another group of students. The augmented

group now totaling about 2,000¹ turned the corner and proceeded south, coming to a halt in the next block opposite the courthouse.

As Cox, still at the head of the group, approached the vicinity of the courthouse, he was stopped by Captain Font and Inspector Trigg and brought to Police Chief, Wingate White, who was standing in the middle of St. Louis street. The Chief then inquired as to the purpose of the demonstration. Cox, reading from a prepared paper, outlined his program to White, stating that it would include a singing of the Star Spangled Banner and a "freedom song," recitation of the Lord's Prayer and the Pledge of Allegiance, and a short speech. White testified that he told Cox that "he must confine" the demonstration "to the west side of the street." White added, "This, of course, was not—I didn't mean it in the import that I was giving him any permission to do it, but I was presented with a situation that was accomplished, and I had to make a decision." Cox testified that the officials agreed to permit the meeting. James Erwin, news director of radio station WIBR, a witness for the State, was present and overheard the conversation. He testified that "My understanding was that they would be allowed to demonstrate if they stayed on the west side of the street and stayed within the recognized time,"² and that this was "agreed to" by White.³

¹ Estimates of the crowd's size varied from 1,500 to 3,800. Two thousand seems to have been the general consensus and was the figure accepted by the Louisiana Supreme Court, 244 La., at 1095, 156 So. 2d, at 451.

² There were varying versions in the record as to the time the demonstration would take. The State's version was that Cox asked for seven minutes. Cox's version was that he said his speech would take seven minutes but that the whole program would take between 17 and 25 minutes.

³ The "permission" granted the students to demonstrate is discussed at greater length in No. 49, where its legal effect is considered.

The students were then directed by Cox to the west sidewalk, across the street from the courthouse, 101 feet from its steps. They were lined up on this sidewalk about five deep and spread almost the entire length of the block. The group did not obstruct the street. It was close to noon and, being lunch time, a small crowd of 100 to 300 curious white people, mostly courthouse personnel, gathered on the east sidewalk and courthouse steps, about 100 feet from the demonstrators. Seventy-five to eighty policemen, including city and state patrolmen and members of the Sheriff's staff, as well as members of the fire department and a fire truck were stationed in the street between the two groups. Rain fell throughout the demonstration.

Several of the students took from beneath their coats picket signs similar to those which had been used the day before. These signs bore legends such as "Don't buy discrimination for Christmas," "Sacrifice for Christ, don't buy," and named stores which were proclaimed "unfair." They then sang "God Bless America," pledged allegiance to the flag, prayed briefly, and sang one or two hymns, including "We Shall Overcome." The 23 students, who were locked in jail cells in the courthouse building out of the sight of the demonstrators, responded by themselves singing; this in turn was greeted with cheers and applause by the demonstrators. Appellant gave a speech, described by a State's witness as follows:

"He said that in effect that it was a protest against the illegal arrest of some of their members and that other people were allowed to picket and he said that they were not going to commit any violence," that if

* A few days before, Cox had participated with some of the demonstrators in a "direct non-violent clinic" sponsored by CORE and held at St. Mark's church.

anyone spit on them, they would not spit back on the person that did it."⁵

Cox then said:

"All right. It's lunch time. Let's go eat. There are twelve stores we are protesting. A number of these stores have twenty counters; they accept your money from nineteen. They won't accept it from the twentieth counter. This is an act of racial discrimination. These stores are open to the public. You are members of the public. We pay taxes to the Federal Government and you who live here pay taxes to the state."⁶

In apparent reaction to these last remarks, there was what state witnesses described as "muttering" and "grumbling" by the white onlookers.⁷

The Sheriff, deeming, as he testified, Cox's appeal to the students to sit in at the lunch counters to be "inflam-

⁵ Sheriff Clemens had no objection to this part of the speech. He testified on cross-examination as follows:

"Q. Did you have any objection to that part of his talk?

"A. None whatever. If you would have done what he said, there would have been no trouble at all. The whole thing would have been over and done with.

"Q. Did you have any objection to them being assembled on that side of the street while he was making that speech, sir?

"A. I had no objection to it."

⁶ Sheriff Clemens objected strongly to these words. He testified on cross-examination as follows:

"Q. Now, what part of his speech became objectionable to him being assembled there?

"A. The inflammatory manner in which he addressed that crowd and told them to go on up town, go to four places on the protest list, sit down and if they don't feed you, sit there for one hour.

⁷ The exact sequence of these events is unclear from the record, being described differently not only by the State and the defense, but also by the state witnesses themselves. It seems reasonably certain, however, that the response to the singing from the jail, the end of Cox's speech, and the "muttering" and "grumbling" of the white onlookers all took place at approximately the same time.

matory," then took a power microphone and said, "Now, you have been allowed to demonstrate. Up until now your demonstration has been more or less peaceful, but what you are doing now is a direct violation of the law, a disturbance of the peace, and it has to be broken up immediately." The testimony as to what then happened is disputed. Some of the State's witnesses testified that Cox said, "don't move"; others stated that he made a "gesture of defiance." It is clear from the record, however, that Cox and the demonstrators did not then and there break up the demonstration. Two of the Sheriff's deputies immediately started across the street and told the group, "You have heard what the Sheriff said, now, do what he said." A state witness testified that they put their hands on the shoulders of some of the students "as though to shove them away."

Almost immediately thereafter—within a time estimated variously at two to five minutes—one of the policemen exploded a tear gas shell at the crowd. This was followed by several other shells. The demonstrators quickly dispersed, running back towards the State Capitol and the downtown area; Cox tried to calm them as they ran and was himself one of the last to leave.

No Negroes participating in the demonstration were arrested on that day. The only person then arrested was a young white man, not a part of the demonstration, who was arrested "because he was causing a disturbance." The next day appellant was arrested and charged with the four offenses above described.

II.

THE BREACH OF THE PEACE CONVICTION.

Appellant was convicted of violating a Louisiana "disturbing the peace" statute, which provides:

"Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of

the peace may be occasioned thereby . . . crowds or congregates with others . . . in or upon . . . a public street or public highway, or upon a public sidewalk, or any other public place or building . . . and who fails or refuses to disperse and move on, . . . when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person . . . shall be guilty of disturbing the peace." La. Rev. Stat. 14:103.1 (Cum. Supp. 1962).

It is clear to us that on the facts of this case, which are strikingly similar to those present in *Edwards v. South Carolina*, 372 U. S. 229, and *Fields v. South Carolina*, 375 U. S. 44, Louisiana infringed appellant's rights of free speech and free assembly by convicting him under this statute. As in *Edwards*, we do not find it necessary to pass upon appellant's contention that there was a complete absence of evidence so that his conviction deprived him of liberty without due process of law. Cf. *Thompson v. Louisville*, 362 U. S. 199. We hold that Louisiana may not constitutionally punish appellant under this statute for engaging in the type of conduct which this record reveals, and also that the statute as authoritatively interpreted by the Louisiana Supreme Court is unconstitutionally broad in scope.

The Louisiana courts have held that appellant's conduct constituted a breach of the peace under state law, and as in *Edwards*, "we may accept their decision as binding upon us to that extent," *Edwards v. South Carolina*, *supra*, at 235; but our independent examination of the record, which we are required to make,⁸

⁸ Because a claim of constitutionally protected right is involved, it "remains our duty in a case such as this to make an independent examination of the whole record." *Edwards v. South Carolina*, *supra*; *Blackburn v. Alabama*, 361 U. S. 199, 205, n. 5; *Pennekamp*

shows no conduct which the State had a right to prohibit as a breach of the peace.

Appellant led a group of young college students who wished "to protest segregation" and discrimination against Negroes and the arrest of 23 fellow students. They assembled peaceably at the State Capitol building and marched to the courthouse where they sang, prayed and listened to a speech. A reading of the record reveals agreement on the part of the State's witnesses that Cox had the demonstration "very well controlled," and until the end of Cox's speech, the group was perfectly "orderly." Sheriff Clemens testified that the crowd's activities were not "objectionable" before that time. They became objectionable, according to the Sheriff himself, when Cox, concluding his speech, urged the students to go downtown and sit in at lunch counters. The Sheriff testified that the sole aspect of the program to which he objected was "the inflammatory manner in which he [Cox] addressed the crowd and told them to go on uptown, go to four places on the protest list, sit down and if they don't feed you, sit there for one hour." Yet this part of Cox's speech obviously did not deprive the demonstration of its protected character under the Constitution as free speech and assembly. See *Edwards v. South Carolina, supra*; *Cantwell v. Connecticut*, 310 U. S. 296; *Thornhill v. Alabama*, 310 U. S. 88; *Garner v. Louisiana*, 368 U. S. 157, 185 (concurring opinion of Mr. JUSTICE HARLAN).

The State argues, however, that while the demonstrators started out to be orderly, the loud cheering and

v. *Florida*, 328 U. S. 331, 335; *Fiske v. Kansas*, 274 U. S. 380, 385-386. In the area of First Amendment freedoms as well as areas involving other constitutionally protected rights, "we cannot avoid our responsibilities by permitting ourselves to be 'completely bound by state court determination of any issue essential to decision of a claim of federal right, else federal law could be frustrated by distorted fact finding.'" *Haynes v. Washington*, 373 U. S. 503, 515-516; *Stern v. New York*, 346 U. S. 156, 181.

clapping by the students in response to the singing from the jail converted the peaceful assembly into a riotous one.⁹ The record, however, does not support this assertion. It is true that the students, in response to the singing of their fellows who were in custody, cheered and applauded. However, the meeting was an outdoor meeting and a key state witness testified that while the singing was loud, it was not disorderly. There is, moreover, no indication that the mood of the students was ever hostile, aggressive, or unfriendly. Our conclusion that the entire meeting from the beginning until its dispersal by tear gas was orderly¹⁰ and not riotous is confirmed by

⁹ This cheer and shout was described differently by different witnesses, but the most extravagant descriptions were the following: "a jumbled roar like people cheering at a football game," "loud cheering and spontaneous clapping and screaming and a great hulla-baloo," "a great outburst," a cheer of "conquest . . . much wilder than a football game," "a loud reaction, not disorderly, loud," "a shout, a roar," and an emotional response "in jubilation and exhortation." Appellant agreed that some of the group "became emotional" and "tears flowed from young ladies' eyes."

¹⁰ There is much testimony that the demonstrators were well controlled and basically orderly throughout. G. Dupre Litton, an attorney and witness for the State, testified, "I would say that it was an orderly demonstration. It was too large a group, in my opinion, to congregate at that place at that particular time, which is nothing but my opinion . . . but generally, . . . it was orderly." Robert Durham, a news photographer for WRBZ, a state witness, testified that although the demonstration was not "quiet and peaceful," it was basically "orderly." James Erwin, news director of WIBR, a witness for the State, testified as follows:

"Q. Was the demonstration generally orderly?"

"A. Yes, Reverend Cox had it very well controlled."

On the other hand, there is some evidence to the contrary: Erwin also stated:

"Q. Was it orderly up to the point of throwing the tear gas?"

"A. No, there was one minor outburst after he called for the sit-ins, and then a minor reaction, and then a loud reaction, not dis-

a film of the events taken by a television news photographer, which was offered in evidence as a state exhibit. We have viewed the film, and it reveals that the students, though they undoubtedly cheered and clapped, were well-behaved throughout. My Brother BLACK, concurring in this opinion and dissenting in No. 49, *post*, agrees "that the record does not show boisterous or violent conduct or indecent language on the part of the . . ." students. *Post*, at p. 9. The singing and cheering does not seem to us to differ significantly from the constitutionally protected activity of the demonstrators in *Edwards*,¹¹ who loudly sang "while stamping their feet and clapping their hands." *Edwards v. South Carolina, supra*, at 233.¹²

orderly, loud A loud reaction when the singing occurred upstairs."

And James Dumigan, a police officer, thought that the demonstrators showed a certain disorder "by hollering loud, clapping their hands." But this latter evidence is surely not sufficient, particularly in face of the film, to lead us to conclude that the cheering was so disorderly as to be beyond that held constitutionally protected in *Edwards v. South Carolina, supra*.

¹¹ Moreover, there are not significantly more demonstrators here than in *Fields v. South Carolina, supra*, at 44, which involved more than 1,000 students.

¹² Witnesses who concluded that a breach of the peace was threatened or had occurred based their conclusions, not upon the shouting or cheering, but upon the fact that the group was demonstrating at all, upon Cox's suggestion that the group sit-in, or upon the reaction of the white onlookers across the street. Rush Blossat, a state witness, testified that while appellant "didn't say anything of a violent nature," there was "emotional upset," "a feeling of disturbance in the air," and "agitation"; he thought, however, that all this was caused by Cox's remarks about "black and white together." James Erwin, a state witness, and news director of WIBR, testified that there was "considerable stirring" and a "restiveness," but among the white group. He also stated that the reaction of the white group to Cox's speech "was electrifying." "You could hear grumbling from the small group of white people, some total of two hundred fifty, perhaps . . . and there was a definite feeling of

Our conclusion that the record does not support the contention that the students' cheering, clapping and singing constituted a breach of the peace is confirmed by the fact that these were not relied on as a basis for conviction.

ill will that had sprung up." He was afraid that "violence was about to erupt" but also thought that Cox had his group under control and did not want violence. G. L. Johnston, a police officer and a witness for the State, felt that the disorderly part of the demonstration was Cox's suggestion that the group sit-in. Vay Carpenter, and Mary O'Brien, legal secretaries and witnesses for the State, thought that the mood of the crowd changed at the time of Cox's speech and became "tense." They thought this was because of the sit-in suggestion. Chief Kling of the Sheriff's office, testifying for the State, said that the situation became one "that was explosive and one that had gotten to the point where it had to be handled or it would have gotten out of hand"; however, he based his opinion upon "the mere presence of these people in downtown Baton Rouge in such great numbers." Police Captain Font also testified for the State that the situation was "explosive"; he based this opinion on, "how they came, such a large group like that, just coming out of nowhere, just coming, filling the streets, filling the sidewalks. We are prepared—we have traffic officers. We can handle traffic situations if we are advised that we are going to have a traffic situation, if the sidewalk is going to be blocked, if the street is going to be blocked, but we wasn't advised of it. They just came and blocked it." He added that he feared "bloodshed," but based this fear upon "when the Sheriff requested them to move, they didn't move; when they cheered in a conquest type of tone, their displaying of the signs, the deliberate agitation that 25 people had been arrested the day before, and then they turned right around and just agitated the next day in the same prescribed manner." He also felt that the students displayed their signs in a way which was "agitating." Inspector Trigg testified for the State that "from their actions, I figured they were going to try to storm the courthouse and take over the jail and try to get the prisoners that they had come down here to protest." However, Trigg based his conclusions upon the students having marched down from the capitol and paraded in front of the courthouse; he thought they were "violent" because "they continued to march around this courthouse, and they continued to march down here and do thing that disrupts our way of living down here." Sheriff Clemens testified that the assembly "became

tion by the trial judge, who, rather, stated as his reason for convicting Cox of disturbing the peace that "[i]t must be recognized to be inherently dangerous and a breach of the peace to bring 1,500 people, colored people, down in the predominantly white business district in the City of Baton Rouge and congregate across the street from the courthouse and sing songs as described to me by the defendant as the CORE national anthem carrying lines such as 'black and white together,' and to urge those 1,500 people to descend upon our lunch counters and sit there until they are served. That has to be an inherent breach of the peace, and our statute 14:103.1 has made it so."

Finally, the State contends that the conviction should be sustained because of fear expressed by some of the state witnesses that "violence was about to erupt" because of the demonstration. It is virtually undisputed, however, that the students themselves were not violent and threatened no violence. The fear of violence seems to have been based upon the reaction of the group of white citizens looking on from across the street. One state witness testified that "he felt the situation was getting out of hand" as on the courthouse side of St. Louis street "were small knots or groups of white citizens who were muttering words, who seemed a little bit agitated."

objectionable" at the time of Cox's speech. The Sheriff objected to "the inflammatory manner in which he addressed that crowd and told them to go on up town, go to four places on the protest list, sit down and if they don't feed you, sit there for one hour. Prior to that though, out from under these coats, some signs of—picketing signs. I don't know what's coming out of there next. It could be anything under a coat. It became inflammatory, and when he gestured, go on up town and take charge of these places of business. That is what they were trying to do is take charge of this courthouse."

A close reading of the record seems to reveal next to no evidence that anyone thought that the shouting and cheering was what constituted the threatened breach of the peace.

A police officer stated that the reaction of the white crowd was not violent, but "was rumblings." Others felt the atmosphere became "tense" because of "mutterings," "grumbling," and "jeering" from the white group. There is no indication, however, that any member of the white group threatened violence. And, this small crowd estimated at between 100 and 300 was separated from the students by "seventy-five to eighty" armed policemen, including "every available shift of the City Police," the "Sheriff's Office" in full complement," and "additional help from the State Police," along with a "fire truck and the Fire Department." As Inspector Trigg testified, they could have handled the crowd.

This situation, like that in *Edwards*, is "a far cry from the situation in *Feiner v. New York*, 340 U. S. 315." See *Edwards v. South Carolina*, *supra*, at 236. Nor is there any evidence here of "fighting words." See *Chaplinsky v. New Hampshire*, 315 U. S. 568. Here again, as in *Edwards*, this evidence "showed no more than that the opinions which . . . [the students] were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection." *Edwards v. South Carolina*, *supra*, at 237. Conceding this was so, the "compelling answer . . . is that constitutional rights may not be denied simply because of hostility to their assertion or exercise." *Watson v. Memphis*, 373 U. S. 526, 535.

There is an additional reason why this conviction cannot be sustained. The statute at issue in this case, as authoritatively interpreted by the Louisiana Supreme Court, is unconstitutionally vague in its overly broad scope. The statutory crime consists of two elements: (1) congregating with others "with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned," and (2) a refusal to move on after having been ordered to do so by a law

enforcement officer. While the second part of this offense is narrow and specific, the first element is not. The Louisiana Supreme Court in this case defined the term "breach of the peace" as "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." 244 La., at 1105; 156 So. 2d, at 455. In *Edwards*, defendants had been convicted of a common-law crime similarly defined by the South Carolina Supreme Court. Both definitions would allow persons to be punished merely for peacefully expressing unpopular views. Yet, a "function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudice and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech . . . is . . . protected against censorship or punishment. . . . There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political groups." *Terminiello v. Chicago*, 337 U. S. 1, 4-5. In *Terminiello* convictions were not allowed to stand because the trial judge charged that speech of the defendants could be punished as a breach of the peace "if it stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance, or if it molests the inhabitants in the enjoyment of peace and quiet by arousing alarm." *Id.*, at 3. The Louisiana statute, as interpreted by the Louisiana court, is at least as likely to allow conviction for innocent speech as was the charge of the trial judge in *Terminiello*. Therefore, as in *Terminiello* and *Edwards* the conviction under this statute must be reversed as the statute is unconstitutional in that it sweeps within its broad scope activities that are consti-

tutionally protected free speech and assembly. Maintenance of the opportunity for free political discussion is a basic tenet of our constitutional democracy. As Chief Justice Hughes stated in *Stromberg v. California*, 283 U. S. 359, 369: "A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment."

For all these reasons we hold that appellant's freedom of speech and assembly, secured to him by the First Amendment as applied to the States, by the Fourteenth Amendment, were denied by his conviction for disturbing the peace. The conviction on this charge cannot stand.

III.

THE OBSTRUCTING PUBLIC PASSAGES CONVICTION.

We now turn to the issue of the validity of appellant's conviction for violating the Louisiana statute, La. Rev. Stat. 14:100.1 (Cum. Supp. 1962), which provides:

"Obstructing Public Passages"

"No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.

"Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions."

Appellant was convicted under this statute, not for leading the march to the vicinity of the courthouse, which the Louisiana Supreme Court stated to have been "orderly," 244 La., at 1096, 156 So. 2d, at 451, but for leading the meeting on the sidewalk across the street from the courthouse. *Id.*, at 1094, 1106-1107, 156 So. 2d, at 451, 455. In upholding appellant's conviction under this statute, the Louisiana Supreme Court thus construed the statute so as to apply to public assemblies which do not have as their specific purpose the obstruction of traffic. There is no doubt from the record in this case that this far sidewalk was obstructed, and thus, as so construed, appellant violated the statute.

Appellant, however, contends that as so construed and applied in this case, the statute is an unconstitutional infringement on freedom of speech and assembly. This contention on the facts here presented raises an issue with which this Court has dealt in many decisions. That is, the right of a State or municipality to regulate the use of city streets and other facilities to assure the safety and convenience of the people in their use and the concomitant right of the people of free speech and assembly. See *Lovell v. Griffin*, 303 U. S. 444; *Hague v. CIO*, 307 U. S. 496; *Schneider v. State*, 308 U. S. 147; *Thornhill v. Alabama*, 310 U. S. 88; *Cantwell v. Connecticut*, 310 U. S. 296; *Cox v. New Hampshire*, 312 U. S. 569; *Largent v. Texas*, 318 U. S. 418; *Saia v. New York*, 334 U. S. 558; *Kovacs v. Cooper*, 336 U. S. 77; *Niemotko v. Maryland*, 340 U. S. 268; *Kunz v. New York*, 340 U. S. 290; *Poulos v. New Hampshire*, 345 U. S. 395.

From these decisions certain clear principles emerge. The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The consti-

tutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection. One would not be justified in ignoring the familiar red light because this was thought to be a means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement. A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations. See *Lovell v. Griffin*, *supra*, at 451; *Cox v. New Hampshire*, *supra*, at 574; *Schneider v. State*, *supra*, at 160-161; *Cantwell v. Connecticut*, *supra*, at 306-307; *Giboney v. Empire Storage & Ice Co.*, 336 U. S. 490; *Poulos v. New Hampshire*, *supra*, at 405-408; see also, *Edwards v. South Carolina*, *supra*, at 236.

We emphatically reject the notion urged by appellant that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech. See the discussion and cases cited in No. 49, *post*, at 4. We reaffirm the statement of the Court in *Giboney v. Empire Storage & Ice Co.*, *supra*, at 502, that "it has never been

deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed."

We have no occasion in this case to consider the constitutionality of the uniform, consistent, and nondiscriminatory application of a statute forbidding all access to streets and other public facilities for parades and meetings.¹³ Although the statute here involved on its face precludes all street assemblies and parades,¹⁴ it has not been so applied and enforced by the Baton Rouge authorities. City officials who testified for the State clearly indicated that certain meetings and parades are permitted in Baton Rouge, even though they have the effect of obstructing traffic, provided prior approval is obtained. This was confirmed in oral argument before this Court by counsel for the State. He stated that parades and meetings are permitted, based on "arrangements . . . made with officials." The statute itself provides no standards for the determination of local officials as to which assemblies to permit or which to prohibit. Nor are there any administrative regulations on this sub-

¹³ It has been argued that, in the exercise of its regulatory power over streets and other public facilities, a State or municipality could reserve the streets completely for traffic and other facilities for rest and relaxation of the citizenry. See *Kovacs v. Cooper*, *supra*, at 98 (opinion of Mr. Justice Jackson); *Kunz v. New York*, *supra*, at 298. (Mr. Justice Jackson, dissenting). The contrary, however, has been indicated, at least to the point that some open area must be preserved for outdoor assemblies. See *Hague v. CIO*, *supra*, at 515-516 (opinion of Mr. Justice Roberts); *Kunz v. New York*, *supra*, at 293; *Niemotko v. Maryland*, *supra*, at 283 (Mr. Justice Frankfurter, concurring). See generally, *Poulos v. New Hampshire*, *supra*, at 403; *Niemotko v. Maryland*, *supra*, at 272-273.

¹⁴ With the express exception, of course, of labor picketing. This exception points up the fact that the statute reaches beyond mere traffic regulation to restrictions on expression.

ject which have been called to our attention.¹⁵ From all the evidence before us it appears that the authorities in Baton Rouge permit or prohibit parades or street meetings in their completely uncontrolled discretion.

The situation is thus the same as if the statute itself expressly provided that there could only be peaceful parades or demonstrations in the unbridled discretion of the local officials. The pervasive restraint on freedom of discussion by the practice of the authorities under the statute is not any less effective than a statute expressly permitting such selective enforcement. A long line of cases in this Court make it clear that a State or municipality cannot "require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be . . . disseminate[d]" *Schneider v. State, supra*, at 164. See *Lovell v. Griffin, supra*; *Hague v. CIO, supra*; *Largent v. Texas, supra*; *Saia v. New York, supra*; *Niemotko v. Maryland, supra*; *Kunz v. New York, supra*.

¹⁵ Although cited by neither party, research has disclosed the existence of a local ordinance of Baton Rouge, Baton Rouge City Code, Tit. 11, § 210 (1957), which prohibits "parades . . . along any street except in accordance with a permit issued by the chief of police . . ." A similar ordinance was in existence in *Fields v. South Carolina, supra*. As in *Fields*, this ordinance is irrelevant to the conviction in this case as not only was appellant not charged with its violation, but the existence of the ordinance was never referred to by the State in any of the courts involved in the case, including this one, and neither the Louisiana trial court or Supreme Court relied on the ordinance in sustaining appellant's convictions under the three statutes here involved. Moreover, since the ordinance apparently sets forth no standards for the determination of the chief of police as to which parades to permit or which to prohibit, obvious constitutional problems would arise if appellant had been convicted for parading in violation of it. See the discussion in text above; *Lovell v. Griffin, supra*, at 452-453; *Hague v. CIO, supra*, at 518; *Saia v. New York, supra*, at 559-560.

This Court has recognized that the lodging of such broad discretion in a public official allows him to determine which expressions of view will be permitted and which will not. This thus sanctions a device for the suppression of the communication of ideas and permits the official to act as a censor. See *Saia v. New York*, *supra*, at 562. Also inherent in such a system allowing parades or meetings only with the prior permission of an official is the obvious danger to the right of a person or group not to be denied equal protection of the laws. See *Niemotko v. Maryland*, *supra*, at 272, 284; cf. *Yick Wo v. Hopkins*, 118 U. S. 356. It is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups either by use of a statute providing a system of broad discretionary licensing power or, as in this case, the equivalent of such a system by selective enforcement of an extremely broad prohibitory statute.

It is, of course, undisputed that appropriate, limited discretion, under properly drawn statutes or ordinances, concerning the time, place, duration, or manner of use of the streets for public assemblies may be vested in administrative officials, provided that such limited discretion is "exercised with 'uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination' . . . [and with] a 'systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways . . .'" *Cox v. New Hampshire*, *supra*, at 576. See *Poulos v. New Hampshire*, *supra*.

But here it is clear that the practice in Baton Rouge allowing unfettered discretion in local officials in the regulation of the use of the streets for peaceful parades and meetings is an unwarranted abridgment of appellant's freedom of speech and assembly secured to him by the

First Amendment, as applied to the States by the Fourteenth Amendment. It follows, therefore, that appellant's conviction for violating the statute as so applied and enforced must be reversed.

For the reasons discussed above the judgment of the Supreme Court of Louisiana is reversed.

Reversed.

SUPREME COURT OF THE UNITED STATES

Nos. 24 AND 49.—OCTOBER TERM, 1964.

B. Elton Cox, Appellant,

24

v.

State of Louisiana.

B. Elton Cox, Appellant,

49

v.

State of Louisiana.

On Appeals From the Supreme
Court of Louisiana.

[January 18, 1965.]

MR. JUSTICE BLACK, concurring in No. 24 and dissenting in No. 49.

I concur in the Court's judgment reversing appellant Cox's conviction for violation of the Louisiana statutes prohibiting breach of the peace and obstructing public passages, but I do so for reasons which differ somewhat from those stated in the Court's opinion. I therefore deem it appropriate to state separately my reasons for voting to hold both these statutes unconstitutional and to reverse the convictions under them. On the other hand, I have no doubt that the State has power to protect judges, jurors, witnesses, and court officers from intimidation by crowds which seek to influence them by picketing, patrolling, or parading in or near the court-houses in which they do their business or the homes in which they live, and I therefore believe that the Louisiana statute which protects the administration of justice by forbidding such interferences is constitutional, both as written and as applied. Since I believe that the evidence showed practically without dispute that appellant violated this statute, I think this conviction should be affirmed.

There was ample evidence for the jury to have found the following to be the facts: On December 14, 1961, 23 persons were arrested and put in jail on a charge of

illegal picketing. That night appellant Cox and others made plans to carry on a "demonstration," that is, a parade and march, through parts of Baton Rouge, ending at the courthouse. Their purpose was to "protest" against what they called the "illegal arrest" of the 23 picketers. They neither sought nor obtained any permit for such a use of the streets. The next morning, December 15, the plan was carried out. Some 2,000 protesters marched to a point 101 feet across the street from the courthouse, which also contained the jail. State and county police officers, for reasons as to which there was a conflict in the evidence from which different inferences could be drawn, agreed that the picketers might stay there for a few minutes. The group sang songs along with the prisoners in the jail and did other things set out in the Court's opinion. Later state and county officials told Cox, the group's leader, that the crowd had to "move on." Cox told his followers to stay where they were and they did. Officers then used tear gas and the picketers ran away. Cox was later arrested.

I. THE BREACH-OF-PEACE CONVICTION.

I agree with that part of the Court's opinion holding that the Louisiana breach-of-the-peace statute¹ on its face

¹ La. Rev. Stat. § 14.103.1 (Cum. Supp. 1962) provides in relevant part:

"Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby: (1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon . . . a public street or public highway, or upon a public sidewalk, or any other public place or building . . . and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do

and as construed by the State Supreme Court is so broad as to be unconstitutionally vague under the First and Fourteenth Amendments. See *Winters v. New York*, 333 U. S. 507, 509-510. The statute does not itself define the conditions upon which people who want to express views may be allowed to use the public streets and highways, but leaves this to be defined by law enforcement officers. The statute therefore neither forbids all crowds to congregate and picket on streets, nor is it narrowly drawn to prohibit congregating or patrolling under certain clearly defined conditions while preserving the freedom to speak of those who are using the streets as streets in the ordinary way that the State permits. A state statute of either of the two types just mentioned, regulating conduct—patrolling and marching—as distinguished from speech, would in my judgment be constitutional, subject only to the condition that if such a law had the effect of indirectly impinging on freedom of speech, press, or religion, it would be unconstitutional if under the circumstances it appeared that the State's interest in suppressing the conduct was not sufficient to outweigh the individual's interest in engaging in conduct closely involving his First Amendment freedoms. As this Court held in *Schneider v. State*, 308 U. S. 147, 161:

Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the cir-

by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person . . . shall be guilty of disturbing the peace. . . ."

circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights.

See also, *e. g.*, *Brotherhood of R. Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U. S. 1; *NAACP v. Button*, 371 U. S. 415; *NAACP v. Alabama ex rel. Patterson*, 357 U. S. 449; *Martin v. City of Struthers*, 319 U. S. 141; *Cantwell v. Connecticut*, 310 U. S. 296; *Lovell v. City of Griffin*, 303 U. S. 444; *Grosjean v. American Press Co.*, 297 U. S. 233. As I discussed at length in my dissenting opinion in *Barenblatt v. United States*, 360 U. S. 109, 141-142, when passing on the validity of a regulation of conduct, which may indirectly infringe on free speech, this Court does, and I agree that it should, "weigh the circumstances" in order to protect, not to destroy, freedom of speech, press, and religion.

The First and Fourteenth Amendments, I think, take away from government, state and federal, all power to restrict freedom of speech, press, and assembly where people have a right to be for such purposes. This does not mean, however, that these amendments also grant a constitutional right to engage in the conduct of picketing or patrolling, whether on publicly owned streets or on privately owned property. See *Labor Board v. Fruit & Vegetable Packers & Warehousemen*, 377 U. S. 58, 76 (concurring opinion). Were the law otherwise, people on the streets, in their homes and anywhere else could be compelled to listen against their will to speakers they did not want to hear. Picketing, though it may be utilized to communicate ideas, is not speech, and therefore is not of itself protected by the First Amendment. *Hughes v. Superior Court*, 339 U. S. 460, 464-466; *Giboney v. Empire Storage & Ice Co.*, 336 U. S. 490; *Bakery & Pastry Drivers & Helpers v. Wohl*, 315 U. S. 769, 775-777 (DOUGLAS, J., concurring).

However, because Louisiana's breach-of-peace statute is not narrowly drawn to assure nondiscriminatory application, I think it is constitutionally invalid under our holding in *Edwards v. South Carolina*, 372 U. S. 229. See also *Musse v. Utah*, 333 U. S. 95, 96-97. *Edwards*, however, as I understand it, did not hold that either private property owners or the States are constitutionally required to supply a place for people to exercise freedom of speech or assembly. See *Bell v. Maryland*, 378 U. S. 226, 344-346 (dissenting opinion). What *Edwards* as I read it did hold, and correctly I think, was not that the Federal Constitution prohibited South Carolina from making it unlawful for people to congregate, picket, and parade on or near that State's capitol grounds, but rather that in the absence of a clear, narrowly drawn, nondiscriminatory statute prohibiting such gatherings and picketing, South Carolina could not punish people for assembling at the capitol to petition for redress of grievances. In the case before us Louisiana has by a broad, vague statute given policemen an unlimited power to order people off the streets, not to enforce a specific, nondiscriminatory state statute forbidding patrolling and picketing, but rather whenever a policeman makes a decision on his own personal judgment that views being expressed on the street are provoking or might provoke a breach of the peace. Such a statute does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat. Compare *Yick Wo v. Hopkins*, 118 U. S. 356, 369-370. This kind of statute provides a perfect device to arrest people whose views do not suit the policeman or his superiors, while leaving free to talk anyone with whose views the police agree. See *Feiner v. New York*, 340 U. S. 315, 321 (dissenting opinion); cf. *Peters v. Hobby*, 349 U. S. 331, 349-350 (concurring opinion); *Barsky v. Board of Regents*, 347 U. S. 442, 463-464 (dissenting

opinion); *Shaughnessy v. United States ex rel. Mezei*, 345 U. S. 206, 217-218 (dissenting opinion); *Ludecke v. Watkins*, 335 U. S. 160, 173 (dissenting opinion). In this situation I think *Edwards v. South Carolina* and other such cases invalidating statutes for vagueness are controlling. Moreover, because the statute makes an exception for labor organizations and therefore tries to limit access to the streets to some views but not others, I believe it is unconstitutional for the reasons discussed in Part II of this opinion, dealing with the street-obstruction statute, *infra*. For all the reasons stated I concur in reversing the conviction based on the breach-of-peace statute.

II. THE OBSTRUCTING-PUBLIC-PASSAGES CONVICTION.

The Louisiana law against obstructing the streets and sidewalks,² while applied here so as to convict Negroes for assembling and picketing on streets and sidewalks for the purpose of publicly protesting racial discrimination, expressly provides that the statute shall not bar picketing and assembly by labor unions protesting unfair treatment of union members. I believe that the First and Fourteenth Amendments require that if the streets of a town are open to some views, they must be open

² La. Rev. Stat. § 14:100.1 (Cum. Supp. 1962) provides in relevant part:

"No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, watercraft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.

"Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions. . . ."

to all. It is worth noting in passing that the objections of labor unions and of the group led by Cox here may have much in common. Both frequently protest discrimination against their members in the matter of employment. Compare *New Negro Alliance v. Sanitary Grocery Co.*, 303 U. S. 552, 561. This Louisiana law opens the streets for union assembly, picketing, and public advocacy, while denying that opportunity to groups protesting against racial discrimination. As I said above, I have no doubt about the general power of Louisiana to bar all picketing on its streets and highways. Standing, patrolling, or marching back and forth on streets is conduct, not speech, and as conduct can be regulated or prohibited. But by specifically permitting picketing for the publication of labor union views, Louisiana is attempting to pick and choose among the views it is willing to have discussed on its streets. It thus is trying to prescribe by law what matters of public interest people it allows to assemble on its streets may and may not discuss. This seems to me to be censorship in a most odious form, unconstitutional under the First and Fourteenth Amendments. And to deny this appellant and his group use of the streets because of their views against racial discrimination, while allowing other groups to use the streets to voice opinions on other subjects, also amounts, I think, to an invidious discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment.³ Moreover, as the Court points out, city officials despite this statute apparently have permitted favored groups other than labor unions to block the streets with their gatherings. For these reasons I concur in reversing the conviction based on this law.

³ It is of interest that appellant Cox, according to a state witness, said this about the reason his group picketed the courthouse: "[H]e said that in effect that it was a protest against the illegal arrest of some of their members and that other people were allowed to picket and that they should have the right to picket"

III. THE CONVICTION FOR PICKETING NEAR A COURTHOUSE.

I would sustain the conviction of appellant for violation of Louisiana's R. S. § 14:401 (Cum. Supp. 1962), which makes it an offense for anyone, under any conditions, to picket or parade near a courthouse, residence or other building used by a judge, juror, witness, or court officer, "with the intent of influencing" any of them.⁴ Certainly the record shows beyond all doubt that the purpose of the 2,000 or more people who stood right across the street from the courthouse and jail was to protest the arrest of members of their group who were then in jail. As the Court's opinion states, appellant Cox so testified. Certainly the most obvious reason for their protest at the courthouse was to influence the judge and other court officials who used the courthouse and performed their official duties there. The Court attempts to support its holding by its inference that the Chief of Police gave his consent to picketing the courthouse. But quite apart from the fact that a police chief cannot authorize violations of his State's criminal laws,⁵ there was strong, emphatic testimony that if any consent was given it was limited to tell-

⁴ La. Rev. Stat. § 14:401 (Cum. Supp. 1962) provides in relevant part:

"Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more than five thousand dollars or imprisoned not more than one year, or both. . . ."

⁵ Cf. *United States v. Philadelphia National Bank*, 374 U. S. 321, 350-352; *California v. Federal Power Comm'n.*, 369 U. S. 482, 484-485; *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 225-227.

ing Cox and his groups to come no closer to the courthouse than they had already come without the consent of any official, city, state, or federal. And there was also testimony that when told to leave appellant Cox defied the order by telling the crowd not to move. I fail to understand how the Court can justify the reversal of these convictions because of a permission which testimony in the record denies was given, which could not have been authoritatively given anyway, and which even if given was soon afterwards revoked. While I agree that the record does not show boisterous or violent conduct or indecent language on the part of the "demonstrators," the ample evidence that this group planned the march on the courthouse and carried it out for the express purpose of influencing the courthouse officials in the performance of their official duties brings this case squarely within the prohibitions of the Louisiana statute and I think leaves us with no alternative but to sustain the conviction unless the statute itself is unconstitutional, and I do not believe that this statute is unconstitutional, either on its face or as applied.

This statute, like the federal one which it closely resembles,⁶ was enacted to protect courts and court officials from the intimidation and dangers that inhere in huge gatherings at courthouse doors and jail doors to protest arrests and to influence court officials in performing their duties. The very purpose of a court system is to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures. Justice cannot be rightly administered, nor are the lives and safety of prisoners secure, where throngs of people clamor against the processes of justice right outside the courthouse or jailhouse doors. The streets are not now and never have been the proper place to adminis-

⁶ 18 U. S. C. § 1507 (1958 ed.).

ter justice. Use of the streets for such purposes has always proved disastrous to individual liberty in the long run, whatever fleeting benefits may have appeared to have been achieved. And minority groups, I venture to suggest, are the ones who always have suffered and always will suffer most when street multitudes are allowed to substitute their pressures for the less glamorous but more dependable and temperate processes of the law. Experience demonstrates that it is not a far step from what to many seems the earnest, honest, patriotic, kind-spirited multitude of today, to the fanatical, threatening, lawless mob of tomorrow. And the crowds that press in the streets for noble goals today can be supplanted tomorrow by street mobs pressuring the courts for precisely opposite ends.

Minority groups in particular need always to bear in mind that the Constitution, while it requires States to treat all citizens equally and protect them in the exercise of rights granted by the Federal Constitution and laws, does not take away the State's power, indeed its duty, to keep order and to do justice according to law. Those who encourage minority groups to believe that the United States Constitution and federal laws give them a right to patrol and picket in the streets whenever they choose, in order to advance what they think to be a just and noble end, do no service to those minority groups, their cause, or their country. I am confident from this record that this appellant violated the Louisiana statute because of a mistaken belief that he and his followers had a constitutional right to do so, because of what they believed were just grievances. But the history of the past 25 years if it shows nothing else shows that his group's constitutional and statutory rights have to be protected by the courts, which must be kept free from intimidation and coercive pressures of any kind. Government under law as ordained by our Constitution is too precious, too

sacred, to be jeopardized by subjecting the courts to intimidatory practices that have been fatal to individual liberty and minority rights wherever and whenever such practices have been allowed to poison the streams of justice. I would be wholly unwilling to join in moving this country a single step in that direction.

SUPREME COURT OF THE UNITED STATES

Nos. 24 AND 49.—OCTOBER TERM, 1964.

B. Elton Cox, Appellant,

24

v.

State of Louisiana.

B. Elton Cox, Appellant,

49

v.

State of Louisiana.

On Appeals From the Supreme
Court of Louisiana.

[January 18, 1965.]

MR. JUSTICE CLARK, concurring in No. 24 and dissenting in No. 49.

According to the record, the opinions of all of Louisiana's courts and even the majority opinion of this Court, the appellant, in an effort to influence and intimidate the courts and legal officials of Baton Rouge and procure the release of 23 prisoners being held for trial, agitated and led a mob of over 2,000 students in the staging of a modern Donnybrook Fair across from the courthouse and jail. He preferred to resolve the controversy in the streets rather than submit the question to the normal judicial procedures by contacting the judge and attempting to secure bail and an early trial for the prisoners.

Louisiana's statute, § 14:401, under attack here, was taken in *haec verba* from 18 U. S. C. § 1507. The federal statute was enacted by the Congress in 1949 to protect federal courts from demonstrations similar to the one involved in this case. It applies to the Supreme Court Building where this Court sits. I understand that § 1507 was written by members of this Court after disturbances similar to the one here occurred at buildings housing federal courts. Naturally, the Court could hardly be expected to hold its progeny invalid either on the ground

that the use in the statute of the phrase "in or near a building housing a court" was vague or that it violated free speech or assembly. It has been said that an author is always pleased with his own work.

But the Court excuses Cox's brazen defiance of the statute—the validity of which the Court upholds—on a much more subtle ground. It seizes upon the acquiescence of the Chief of Police arising from the laudable motive to avoid violence and possible bloodshed to find that he made an on-the-spot administrative determination that a demonstration confined to the west side of St. Louis Street—101 feet from the courthouse steps—would not be "near" enough to the court building to violate the statute. It then holds that the arrest and conviction of appellant for demonstrating there constitutes an "indefensible sort of entrapment," citing *Raley v. Ohio*, 360 U. S. 423 (1959).

With due deference, the record will not support this novel theory. Nor is *Raley* apposite. This mob of young Negroes led by Cox—2,000 strong—was not only within sight but in hearing distance of the courthouse. The record is replete with evidence that the demonstrators with their singing, cheering, clapping and waving of banners drew the attention of the whole courthouse square as well as the occupants and officials of the court building itself. Indeed, one judge was obliged to leave the building. The 23 students who had been arrested for sit-in demonstrations the night before and who were in custody in the building were also aroused to such an extent that they sang and cheered to the demonstrators from the jail which was in the courthouse and the demonstrators returned the notice with like activity. The law enforcement officials were confronted with a direct obstruction to the orderly administration of their duties as well as an interference with the courts. One hardly needed an on-the-spot administrative decision that the

demonstration was "near" the courthouse with the disturbance being conducted before the eyes and ringing in the ears of court officials, police officers and citizens throughout the courthouse.

Moreover, the Chief testified that when Cox and the 2,000 Negroes approached him on the way to the courthouse that he was faced with a "situation that was accomplished." From the beginning they had been told not to proceed with their march; twice officers had requested them to turn back to the school; on each occasion they had refused. Finding that he could not stop them without the use of force the Chief told Cox that he must confine the demonstration to the west side of St. Louis Street across from the courthouse.

All the witnesses, including the appellant, state that the time for the demonstration was expressly limited. The State's witnesses say seven minutes, while Cox claims his speech was to be seven minutes but the program would take from 17 to 25 minutes. Regardless of the amount of time agreed upon, it is a novel construction of the facts to say that the grant of permission to demonstrate for a limited period of time was an administrative determination that the west side of the street was not "near" the courthouse. This implies that the amount of time might somehow be relevant in deciding whether an activity is within the prohibitions of the statute. The inclusion of a time limitation is, to me, entirely inconsistent with the view that an administrative determination was made. The only way the Court can support its finding is to ignore the time limitation and hold—as it does *sub silencio*—that once Cox and the 2,000 demonstrators were permitted to occupy the sidewalk they could remain indefinitely. Once the administrative determination was made that the west side of St. Louis Street was not so close to the courthouse as to violate the statute it could not be later drawn within the prohibited zone by

Cox's refusal to leave. Thus the 2,000 demonstrators must be allowed to remain there unless in the meanwhile some other statute empowers the State to eject them. This, I submit, is a complete frustration of the power of the State.

Because I am unable to agree that the word "near" when applied to the facts of this case, required an administrative interpretation, and since I feel that the record refutes the conclusion that it was made, I must respectfully dissent from such a finding.

Nor can I follow the Court's logic when it holds that the case is controlled by *Raley v. Ohio, supra*. In *Raley* the petitioners whose convictions were reversed were told that they had a right to exercise their privilege and refuse to answer questions propounded to them in an orderly way during the conduct of a hearing. The administrative determination upon which this Court turns the present case was in actuality made, if at all, in the heat of a racial demonstration in a southern city for the sole purpose of avoiding what had the potentialities of a race riot. In *Raley*, there was no large crowd of 2,000 demonstrators endangering a tenuous racial peace. Indeed, the petitioners in *Raley* might well have chosen to waive their privilege and not been subject to prosecution at all but for the advice tendered them by those conducting the hearing. Here the demonstrators were determined to go to the courthouse regardless of what the officials told them regarding the legality of their acts. Here, like the one petitioner in *Raley* whose conviction was affirmed by an equally divided Court, appellant never relied on the advice or determination of the officer. The demonstration, as I have previously noted, was a *fait accompli*. In view of these distinctions, I can see no enticement or encouragement by agents of the state sufficient to establish a *Raley*-type entrapment.

And even though *arguendo* one admits that the Chief's action was an administrative determination, I cannot see how the Court can hold it binding on the state. It certainly was not made in the free exercise of his discretion.

Reading the facts in a way most favorable to the appellant would, in my opinion, establish only that the Chief of Police consented to the demonstration at that location. However, if the Chief's action be consent, I never knew until today that a law enforcement official—city, state or national—could forgive a breach of the criminal laws. I missed that in my law school, in my practice and for two years while I was head of the Criminal Division of the Department of Justice.

I have always been taught that this Nation was dedicated to freedom *under law* not under mobs, whether they be integrationists or white supremacists. Our concept of equal justice under law encompasses no such protection as the Court gives Cox today. The contemporary drive for personal liberty can only be successful when conducted within the framework of due process of law. Goals, no matter how laudable, pursued by mobocracy in the end must always lead to further restraints of free expression. To permit, and even condone, the use of such anarchistic devices to influence the administration of justice can but lead us to disaster. For the Court to place its imprimatur upon it is a misfortune that those who love the law will always regret.

I must, therefore, respectfully dissent from this action and join my Brother BLACK on this facet of the case. I also agree with him that the statute prohibiting obstruction of public passages is invalid under the Equal Protection Clause.¹ And, as will be seen, I arrive at the same conclusion for the same reason on the question regarding

¹ See Parts I and II of his opinion.

the breach of the peace statute. However, I cannot agree that the latter Act is unconstitutionally vague.

The statute declares congregating "with intent to provoke a breach of the peace" and refusing to disperse after being ordered so to do by an officer to be an offense. Each of these elements is set out in clear and unequivocal language. Certainly the language in the present statute is no more vague than that in the New York statute which was challenged on vagueness grounds in *Feiner v. New York*, 340 U. S. 315.² There the Court upheld *Feiner's* conviction on a disorderly conduct charge. I concur completely in the Court's statement that the present case is a "far cry from the situation" presented in *Feiner*.

There the demonstration was conducted by only one person and the crowd was limited to approximately 80, as compared with the present lineup of some [2,000] demonstrators and [250] onlookers. Perhaps [appellant's] speech was not so animated but in this setting their actions . . . created a much greater danger of riot and disorder. It is my belief that anyone conversant with the almost spontaneous combustion in some Southern communities in such a

² Section 722 of the Penal Law of New York in effect at that time stated:

"Any person who with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:

"1. Uses offensive, disorderly, threatening, abusive or insulting language, conduct or behavior;

"2. Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;

"3. Congregates with others on a public street and refuses to move on when ordered by the police;

"4. By his actions causes a crowd to collect, except when lawfully addressing such a crowd."

situation will agree that the [Sheriff's] action may well have averted a major catastrophe. [*Edwards v. South Carolina*, 372 U. S. 229, 243-244 (dissenting opinion of CLARK, J.).]

Nor can I agree that the instant case is controlled by either *Edwards v. South Carolina*, *supra*, or *Fields v. South Carolina*, 375 U. S. 44 (1963). Both went off on their peculiar facts and neither dealt with a situation like the one here before the Court. Moreover, *Edwards* and *Fields* involved convictions for common-law breach of the peace and not violation of a statute.

In any event, I believe the language of the breach of the peace statute is as free from ambiguity or vagueness as is the statute prohibiting picketing of a courthouse which the Court today upholds. There the relevant words are "parading in or near a building housing a court of the state . . ." with the intent of obstructing justice. Certainly, both of the statutes are as clear as the words "below cost" which this Court approved in *United States v. National Dairy Products*, 372 U. S. 29 (1963), and cases there cited.

However, because this statute contains an express exclusion for the activities of labor unions, I would hold the statute unconstitutional on the equal protection ground my Brother BLACK enunciated with regard to the statute condemning obstruction of public passages.

On these grounds I dissent.

SUPREME COURT OF THE UNITED STATES

Nos. 24 AND 49.—OCTOBER TERM, 1964.

B. Elton Cox, Appellant,

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B. Elton Cox, Appellant,

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On Appeals From the Supreme
Court of Louisiana.

[January 18, 1965.]

MR. JUSTICE WHITE, with whom MR. JUSTICE HARLAN joins, concurring in part and dissenting in part.

In No. 49, I agree with the dissent filed by my Brother BLACK in Part III of his opinion. In No. 24, although I do not agree with everything the Court says concerning the breach of peace conviction, particularly its statement concerning the unqualified protection to be extended to Cox's exhortations to engage in sit-ins in restaurants, I agree that the conviction for breach of peace is governed by *Edwards v. South Carolina*, 372 U. S. 229, and must be reversed.

Regretfully, I also dissent from the reversal of the conviction for obstruction of public passages. The Louisiana statute is not invalidated on its face but only in its application. But this remarkable emasculation of a prohibitory statute is based on only very vague evidence that other meetings and parades have been allowed by the authorities. The sole indication in the record from the state court that such has occurred was contained in the testimony of the chief of police who, in the process of pointing out that Cox and his group had not announced the fact or purpose of their meeting, said "most organizations that want to hold a parade or meeting of any kind, they have no reluctance to evidence their desires at the

start." There is no evidence in the record that other meetings of this magnitude had been allowed on the city streets, had been allowed in the vicinity of the courthouse or had been permitted completely to obstruct the sidewalk and to block access to abutting buildings. Indeed, the sheriff testified that "we have never had such a demonstration since I have been in law enforcement in this parish." He also testified that "any other organization would have received the same treatment if it had conducted such a demonstration in front of the parish courthouse, whether it had been colored or white, protestant, catholic, Jewish, any kind of organization, if they had conducted this same type of demonstration" Similarly the trial judge noted that although Louisiana respects freedom of speech and the right to picket, Louisiana courts "have held that picketing is unlawful when it is mass picketing."

At the oral argument in response to MR. JUSTICE GOLDBERG's question as to whether parades and demonstrations are allowed in Baton Rouge, counsel said, "arrangements are usually made depending on the size of the demonstration, of course, arrangements are made with the officials and their cooperation is not only required it is needed where you have such a large crowd." In my view, however, all of this evidence together falls far short of justification for converting this prohibitory state statute into an open-ended licensing statute invalid under prior decisions of this Court as applied to this case. This is particularly true since the Court's approach is its own invention and has not been urged or litigated by the parties either in this Court or the courts below. Certainly the parties have had no opportunity to develop or to refute the factual basis underlying the Court's rationale.

Under the Court's broad, rather uncritical approach it would seem unavoidable that these same demonstrators

could have met in the middle of any street during the rush hour or could have extended their meeting at any location hour after hour, day after day, without risking any action under this statute for interfering with the normal use of the streets and sidewalks. I doubt that this bizarre intrusion into local management of public streets is either required or justified by the prior cases in this Court.

Furthermore, even if the obstruction statute, because of prior permission granted to others, could not be applied in this case so as to prevent the demonstration, it does not necessarily follow that the federal license to use the streets is unlimited as to time and circumstance. Two thousand people took possession of the sidewalk in an entire city block. Building entrances were blocked and normal use of the sidewalk was impossible. If the crowd was entitled to obstruct in order to demonstrate as the Court holds, it is nevertheless unnecessary to hold that the demonstration and the obstruction could continue *ad infinitum*. Here the demonstration was permitted to proceed for the period of time that the demonstrators had requested. When they were asked to disband, Cox twice refused. If he could refuse at this point I think he could refuse at any later time as well. But in my view at some point the authorities were entitled to apply the statute and to clear the streets. That point was reached here. To reverse the conviction under these circumstances makes it only rhetoric to talk of local power to control the streets under a properly drawn ordinance.